Memorandum

CO 1588-C

Subject	Date
Procedures Manual - Phase II	[illegible]

To
Regional Legalization Officers: Eastern
Southern, Northern, Western

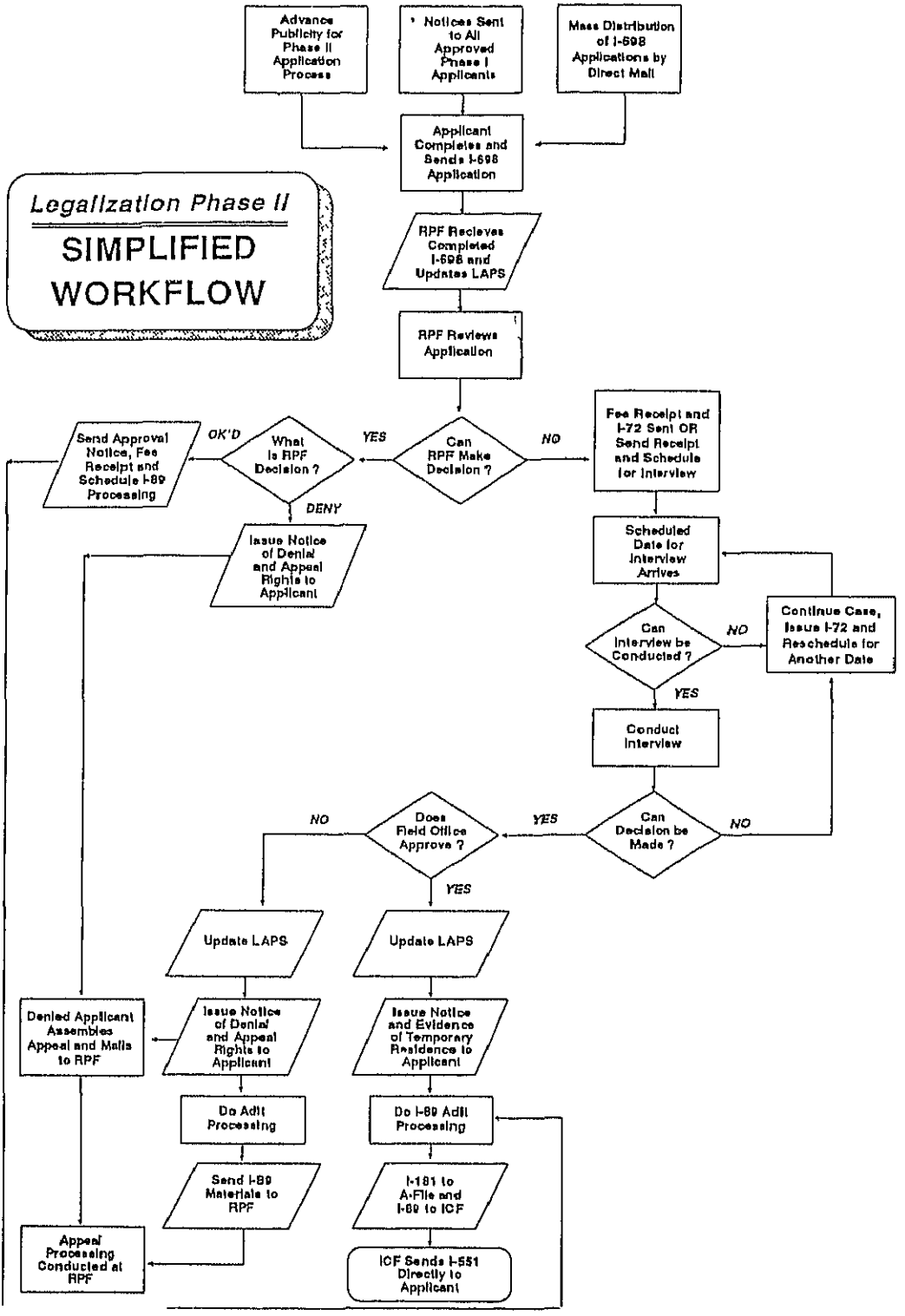
From
Office of Legalization

The attached procedures manual insert replaces the previously issued one distributed to the field November 23, 1988. This revision is dated November 30, 1988. This November 30, 1988 revision replaces in its entirety, the previously issued Phase II procedures manual.

Terrance M. O'Reilly
Deputy Assistant Commissioner

Attachment

Form G-2
(Rev. 1-2-80)


Legalization Phase II
SIMPLIFIED WORKFLOW
Advance Publicity for Phase II Application Process
Notices Sent to All Approved Phase I Applicants
Mass Distribution of I-698 Applications by Direct Mail
Applicant Completes and Sends I-698 Application
RPF Recieves Completed I-698 and Updates LAPS
RPF Reviews Application
Can RPF Make Decision ?
YES
NO
What is RPF Decision ?
OK'D
DENY
Send Approval Notice, Fee Receipt and Schedule I-89 Processing
Issue Notice of Denial and Appeal Rights to Applicant
Fee Receipt and I-72 Sent OR Send Receipt and Schedule for Interview
Scheduled Date for Interview Arrives
Can Interview be Conducted ?
NO
Continue Case, Issue I-72 and Reschedule for Another Date
YES
Conduct Interview
Can Decision be Made ?
NO
YES
Does Field Office Approve ?
NO
YES
Update LAPS
Update LAPS
Denied Applicant Assembles Appeal and Mails to RPF
Issue Notice of Denial and Appeal Rights to Applicant
Issue Notice and Evidence of Temporary Residence to Applicant
Do Adjt Processing
Do I-89 Adjt Processing
Send I-89 Materials to RPF
I-181 to A-File and I-89 to ICF
Appeal Processing Conducted at RPF
ICF Sends I-551 Directly to Applicant

VIII. ADJUSTMENT OF STATUS FROM TEMPORARY TO PERMANENT RESIDENCE UNDER SECTION 245A

A. APPLICATION PROCESS

Applications for permanent residence must be filed on Form I-698 at the Regional Processing Facility having jurisdiction over the applicant's place of residence. District directors may set up "drop boxes" for the local deposit of applications which will then be mailed to the Regional Processing Facility.

In order to help allay the fears of applicants concerning loss of their applications through the mails, personnel can advise applicants to send their application via certified mail and to keep a complete photocopy of their applications. Original documents do not have to be submitted with the application. Copies certified as "true and complete" by a QDE in good standing or an applicant's attorney or accredited representative pursuant to Service regulations 8 CFR 204.2(j)(1) and (2) are acceptable.

Determining exactly when an applicant can apply is important and all personnel should be familiar with how to arrive at a particular applicant's eligibility to apply date. The applicant must apply for adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted temporary resident status. A chart which can be used to determine when an applicant can apply is included as Appendix E.

B. REGULATIONS

A copy of the interim final regulations published on October 31, 1988, is included as Appendix F. All personnel will find it of value to refer to the regulations. A table containing specific topics and regulation citations also appears below:

TOPIC	REG. CITATION
BRIEF AND CASUAL (Definition)	245a.1(h)
QDE IN GOOD STANDING (Definition)	245a.1(r)
SATISFACTORILY PURSUING (Definition)	245a.1(s)
MINIMAL UNDERSTANDING OF ORDINARY ENGLISH (Definition)	245a.1(t)
CURRICULUM (Definition)	245a.1(u)
APPLICATION PERIOD FOR PERMANENT RESIDENCE	245a.3(a)
ELIGIBILITY	245a.3(b)
ENGLISH/HISTORY/GOVERNMENT REQUIREMENT	245a.3(b)(4)
COURSE OF STUDY IN ENG/HIST/GOVT	245a.3(b)(5)
NOTICE OF PARTICIPATION ("BLANKET CERTIFIED COURSE PROVIDERS)	245a.3(b)(6)
CITIZENSHIP TEXTBOOKS	245a.3(b)(8)
MAINTENANCE OF STUDENT RECORDS (BY COURSE PROVIDERS)	245a.3(b)(9)
CERTIFICATE OF SATISFACTORY PURSUIT	245a.3(b)(10)
MONITORING BY INS OF COURSE PROVIDERS	245a.3(b)(12)
STANDARDS FOR SELECTION OF TEACHERS	245a.3(b)(13)
INELIGIBLE ALIENS	245a.3(c)
FILING THE APPLICATION (I-698)	245a.3(d)
INTERVIEW	245a.3(e)
APPLICABILITY OF EXCLUSION GROUNDS	245a.3(f)
DETERMINATION OF "LIKELY TO BECOME A PUBLIC CHARGE" AND SPECIAL RULE	245a.3(f)(4)

C. RPF PROCESSING

1. INS Functions

As in Phase I, INS responsibilities will center on the following:

- o Quality assurance
- o Management oversight
- o Staff training
- o Adjudication of applications
- o Intelligence collection and dissemination
- o Initiation of requests for additional information and documentation and investigations
- o Examination of records
- o Handling of classified mail and files
- o FOIA/PA/General correspondence; and
- o Review and certain updating of automated records.

2. Contractor Functions

- o Receiving, reviewing, sorting and distribution of mail
- o Receiving and initial processing of fees
- o Updating of automated records
- o Return of certain applications for incomplete fee requirements or lack of certain application informational requirements
- o Barcoding of I-698s without barcodes
- o Storing and tracking of files
- o Generation of general correspondence; and
- o Performance of automated procedures.

3. Mail and File Operations

These functions will be performed by the contractor and will parallel those performed in Phase I. (Section VI-3 through VI-11 of the procedures manual).

Phase II operations will differ as follows:

A 90 million files will not be received from the Document Processing Center (DPC) since the Center will not exist for Phase II. Applications will be mailed direct to the Regional Processing Facilities. There will be some A 90 million file movement between RPFs if applicants move from one RPF jurisdiction to another.

I-695s, Applications for Replacement I-688 Temporary Resident Cards, can be received from legalization offices or other Service offices since other Service offices will be performing legalization work in Phase II.

I-698s, Applications to Adjust Status from Temporary to Permanent Resident, returned for various reasons (e.g., incorrect fee) can be

resubmitted and will be handled in a similar fashion as resubmitted I-687s and I-700s.

I-697s, Change of Address Card, should be immediately referred to RPF for update of alien's address on the automated system.

4. Data Processing

With the elimination of the DPC, Phase II data entry will be performed at the Regional Processing Facilities. Data entry will primarily consist of updating an applicant's LAPS record with selected information from the I-698 as well as waiver and appeal updates.

In Phase II RPF adjudicators will enter data primarily on the RVW screen reflecting adjudication decisions. Personnel in legalization and other field offices performing legalization work will also enter data using primarily the PDEC screen. (e.g., I-89 processing).

Data processing will also involve updating the record to reflect the sending and receipt of I-72s for additional information and documentation.

Detailed procedures for data entry are located in the LAPS Users Guide dated September 5, 1988 and October 24, 1988.

5. Files Procedures

It is envisioned that the need for adjudicators at the RPF to review files will be minimal. This is due to the basic operational philosophy for Phase II of not revisiting the adjudicative decision for Phase I. If the file is required by an adjudicator it will be requested on the LAPS I-698 Review (RVW) screen. A case review worksheet will be produced by LAPS and contractor personnel will pull the file and deliver it to the requesting adjudicator. Once the need for the file has been satisfied, the file will be returned for filing.

Files residing in RPFs other than the RPF receiving the I-698 application will receive an automatic FTR (files transfer request) to transfer the file. This will occur when the I-698 data entry occurs. If the file has not been received in the RPF within 30 days, RPF contractor personnel will initiate follow-up action to procure the file.

After review by an adjudicator at the RPF, the I-698 applications will be sent to be filed in the A90 million file. If the case is granted either at the RPF or INS field site, an automated I-181 (record of lawful permanent residence) will be printed by the system and also filed in the A90 million file. If the case is denied a copy of the denial notice will be filed in the A file. If a denial is appealed, the adjudicated appeal notice will be filed in the file. A90 million files will remain resident at the RPF due to the confidentiality provisions associated with the legalization program.

If it becomes known that other than an A90 million file exists on an applicant that file will be requested from the resident Service Files

Control Office. The director, Regional Processing Facility or district director has the discretion to review other than A90 million files created prior to the granting of temporary residence.

6. Application Processing

Applications for permanent residence are received at the Regional Processing Facilities via direct mail from the applicant or the applicant's representative. INS field offices may, upon the discretion of the district director, receive applications via "drop boxes" etc. These will be, in turn, mailed to the Regional Processing Facility.

Once received at the RPF fee receipting and data entry will occur. The I-698s will be moved on to adjudicators where the cases will be reviewed. Cases can be granted, denied, continued, or scheduled for field interview for the grant or denial decision depending on the circumstances of the case. For example, a case received at the RPF that meets all the requirements for permanent residence may be granted at the RPF. If a case cannot be granted at the RPF the case will be scheduled for field office interview. Cases granted at the RPF will be scheduled for I-89 processing at field locations.

Any circumstance resulting in the fingerprinting of an applicant since fingerprint processing by the FBI in Phase I will trigger a notice sheet from the FBI. Notice sheets received at RPFs will be reviewed by adjudicators to determine if a review of the file is warranted. Not every fingerprint submission to the FBI is for criminal involvement (e.g., application for a permit to carry a firearm, application for another INS benefit such as registry, etc.). If an adjudicator decides the file is needed it will be requested and reviewed.

Where additional information is required prior to completion of the adjudicative process, an I-72 will be sent to the applicant requesting the appropriate information. The cases will be held in a pending status until the I-72 response is received. If the I-72 response is not received the case will be held by the system until approximately 60 days prior to the end of that applicant's eligibility period. At that time another request will be sent to the applicant. If no response is received and the eligibility period expires the case will be denied.

If an application is denied by the RPF, the applicant will be formally notified of the reasons for the denial and will be advised of his or her right to appeal.

7. Public Information Processing

Freedom of Information (FOIA)/Privacy Act requests and G-641s

As in Phase I, RPFs may receive FOIA requests and G-641s. In addition, since permanent resident aliens fall within the provisions of the Privacy Act, Privacy Act requests may also be received. FOIA/PA requests may be received on Service Form G-639 or may be received on regular correspondence identified as a FOIA/PA request.

G-641 requests are for verification of information and for copies of material stored at the RPF.

FOIA/PA and G-641 requests will be processed as in Phase I (see procedures manual VI-25).

Requests for forms, change of address (I-697) notification, general correspondence, and inquiry processing will also be handled as in Phase I (see procedures manual VI-26-27).

8. Appeal Processing

When an application for permanent residence is denied or the status of a lawful temporary resident is terminated, the alien is given written notice setting forth the specific reasons for the denial or termination on Form I-692, Notice of Denial. Form I-692 also contains advice to the applicant that he or she may appeal the decision and that an appeal should be accompanied by any additional new evidence the applicant wishes the Service to consider. An appeal can be filed with or without a supporting brief. If the appeal form (I-694) indicates a supporting brief will be forthcoming at a later date, action on the appeal will be held in abeyance until the brief is received or the 30 days allowed for submission of the brief passes. The Form I-692 additionally provides a notice to the alien that if he or she fails to file an appeal from the decision, the Form I-692 will serve as a final notice of ineligibility. Included as part of the written notice of denial, the applicant is given Form I-694, Notice of Appeal, in triplicate. The I-694 was revised on 08/18/88. The Regional Legalization Officers were provided with an advanced copy pending receipt of printed supplies. Copies of the revised I-694 should be therefore used until printed supplies arrive.

To be considered, appeals on Form I-694, Notice of Appeal, have to be filed in triplicate within thirty (30) days of the date on which the notice of denial is served, accompanied by the required fee. A separate fee must accompany each appeal. All fees must be submitted in the exact amount in the form of a money order, cashier's check, or bank check, made payable to the Immigration and Naturalization Service. No personal checks or cash are accepted. Fees are not waived or refunded under any circumstances.

In cases of a denial, the appeal must be filed with the Regional Processing Facility (RPF) having jurisdiction over the applicant's place of residence in the United States.

The time for filing of a supporting brief may be extended at the discretion of the Director of the Regional Processing Facility, if good cause for such an extension is shown by the alien. Such extension may not exceed an additional 15 days, exclusive of the time allowed for service.

Upon receipt of an appeal at the RPF the material submitted is reviewed. If the review indicates that favorable action is in order,

the Director of the RPF may sua sponte reopen the proceeding and reverse any adverse decision.

If, however, the review shows that no change in the denial is warranted, the officer reviewing the case initials the Form I-694 to show that the material submitted with the appeal has been reviewed and considered. The administrative record is forwarded to the Administrative Appeals Unit as provided by 8 CFR 103.1(f)(2) for review and decision. The decision on the appeal is in writing, and if the appeal is dismissed, includes a final notice of ineligibility. A copy of the decision is served upon the applicant and his or her attorney or representative of record. No further appeal lies from this decision.

Any appeal which is filed that: (A) fails to state the reason for appeal; (B) is filed solely on the basis of denial for failure to file the application for adjustment of status under Section 245A in a timely manner; or (C) is patently frivolous, will be summarily dismissed by the Administrative Appeals Unit.

FIELD OFFICE PROCESSING

Interview Process

Applicants will be scheduled for interviews at field offices. Applicants will be processed for alien registration cards and interviewed. Additional areas may have to be explored during interviews depending on the specifics of the case. Applicants exempt from the English/History/Government requirement or satisfying these requirements by satisfactorily pursuing a course of study will usually only need to be processed for alien registration cards.

In a majority of the field offices there will be direct line access to the LAPS database via terminal. Personnel will bring up the applicant's record and enter the appropriate data depending on the outcome of the interview.

If the applicant is to be examined for English/History/Government the test will be conducted by an officer. The applicant will be asked to read and write English. The ability to speak and understand English will be determined from answers to questions normally asked in the course of the interview and processing for permanent resident status.

Reading and writing shall be tested using excerpts from the textbooks on citizenship at the elementary literacy level. Understanding of the history and form of government of the United States shall be tested using the English language and using questions from the standard list of 100 questions. Interviewers shall consider the applicant's education, background, age, length of residence in the United States opportunities available and efforts made to acquire an understanding of the history and form of government of the United States. Once it has been determined that an applicant has satisfied the English/History/Government requirement an applicant's native language can be used to assist with the remainder of the interview (e.g., nonimmigrant visa cancellation, I-89 processing, etc.).

Adit Processing

Introduction

The Form I-89 entitled, "I-551 Card Data Collection Form", is a two-sided data collection form. Side 1 of the form provides space for entering an alien's personal biographic data and space for the collection of an alien's fingerprint, signature, and the attachment of photograph. Side 1 is designed for the initial I-551. Side 2 of the form is designed for all other transactions related to the replacement, recovery or lifting of an I-551 card. Legalization processing will be performed on Side 1.

The Form I-89 was designed to facilitate the speedy processing of an alien for the receipt of an I-551. Care must be taken when completing

this form in order to expedite card production and eliminate the possibility of the rejection of an I-89. It is the accurate and legible collection of data on the Form I-89 that is imperative to the production and subsequent issuance of an I-551. The M-226, I-551 or I-586 Card Data Collection Manual is the reference source for I-89 processing and should be referred to as needed.

Additional Processing Inquiries - May be made by calling the Immigration Card Facility at 214-660-2050. THIS NUMBER IS NOT TO BE GIVEN TO THE PUBLIC.

b. Requirements:

1) Filling out the data fields.

The LAPS database will furnish the Immigration Card Facility (ICF) in Texas with selected data needed for completion of the I-89 record. The remaining I-89 data field items (#1, 2, 4, 7, 17, 18, 26, 27, 28, and 29) will be completed by field office personnel.

I-89 BLOCK NUMBER	NAME OF ITEM	REMARKS
1	Card Type	Check Block 1.
2	Alien Number	8 digits beginning with 9.
4	Name	Format is last name comma First name space middle name. This will be the name on subject's I-551 card. (See section 7: M-226).
7	DOB	MMDDYY. Person's Date of Birth.
17	Other FP	Use when other than right index finger is used for Fingerprint. See Section 5: M-226 for alternate finger codes.
18	Waiver/Reason	Initials of person who took/ checked FP, Signature and Photo and the recording of any applicable waivers and the reason therefore. See M-226, Sections 4, 5, and 6.
26	Stamped or Printed Name of Officer	Stamped or printed name of officer whose signature appears in Item 27. Do NOT exceed space provided.
27	Officer's Signature	Signature of officer. Do NOT

		exceed space provided.
28	LOC Code	Three character code of office where subject was processed.
29	Alien Number	Subject's alien number.
	Alien Photo	Place in glassine envelope or plastic bag and attach to left edge of I-89. Print A# on back of picture. See M-226 for picture specifications.
	Alien Fingerprint	Using ADIT Template obtain alien fingerprint. See M-226 for fingerprint specifications.
	Alien Signature	Using ADIT Template obtain alien's signature. See M-226 for signature specifications.

Legibility is the key to successful completion of the Form I-89. Handprinting the form allows you to process applicants more expeditiously; however, the Immigration Card Facility (ICF) must be able to read the data contained on the form. The use of a medium tip ball point pen is recommended, although a very fine point marker pen will also suffice. The important thing to remember is to PRINT LEGIBLY. If the data is not legible, the ICF will return the Form I-89 to the preparing office. To avoid delay in issuance of the I-551, every effort shall be made to submit acceptable Forms I-89 to the Immigration Card Facility. A sample of a completed I-89 can be found at Appendix G.

2) Data Collection Equipment

The successful preparation of the I-89 is dependent on the use of the correct equipment. The equipment is designed to facilitate the fingerprinting and signing of the I-89.

- Template: The template is a metal device used to insure that the press fingerprint and signature are positioned properly on the I-89. Field personnel will find it advantageous to permanently affix the template to a table or counter top. Illustrations of the template and the positioning of the template appear in Appendix H.

- Printmaster or Porelon pad: The Printmaster Fingerprint Inker is the recommended piece of equipment for fingerprinting. Good results can also be obtained using the Porelon Pad. Sufficient suppplies for the Printmaster should be maintained. If using Porelon pads ensure sufficient print ink remains in the pad to produce a suitable print. POREL0N

PADS CANNOT BE REINKED. Be sure, therefore, to have sufficient a supply of pads on hand.

3) Alien's Photograph

Applicants should appear for interviews with their photographs. Two color photos taken against a white background are required. Photos must be glossy, unretouched and not mounted; dimension of facial image should be about one inch from chin to top of hair. Subject should be shown in three-fourths view showing right side of face with right ear visible. Except, when the right ear is missing or right side of face is disfigured, the left side of applicant may be photographed. Block 18 of the I-89 card is noted that the subject's right side is disfigured. Using pencil or felt pen, lightly print name and A90 million number on the back of each photograph. Photograph specification can be found at Appendix I.

Applicants appearing with unsuitable photographs should be instructed to return with ones that meet the proper specifications. Field office personnel may wish to reproduce Appendix I for use as a handout to help ensure correct photographs are presented.

4) Alien's Signature

The signature should be placed on the I-89 while the I-89 is still inside the template. Employees should use discretion in determining whether or not a very young applicant's signature should be entered on the I-89.

Use black, blue or blue black medium point ballpoint pen for signatures.

Signatures must be placed within the confines of the template slot. Do not adjust the I-89 card in the template to accommodate an applicant's long or large signature.

Employees processing applicants for ADIT processing are to place their initials to the right of the letters "SIG" in block 18 on the I-89.

5) Alien's Fingerprint

All applicants between ages 14 and 79, inclusive, shall be fingerprinted if physically possible. For applicants age under 14 or over 79, the fingerprint is optional, but encouraged. The fingerprint taken should be as sharp and clean as possible. A simple method called the "pressed" print is used. The pressed print is made by simply pressing the finger directly on the inking device in a straight-on fashion and then placing the inked finger directly on paper. The resulting image is shaped somewhat like an oval (see section 5 of the M-226 manual).

The applicant's RIGHT INDEX finger is used to take the fingerprint. If this finger is missing or cannot be used, an alternate finger will be used.

a finger other than the right index finger is used, the code for the ticular finger must be entered in Block 17 and 18. The following bols shall be used to identify the finger or thumb printed.

RIGHT MIDDLE.....RM
RIGHT RING.....RR
RIGHT LITTLE.....RL
RIGHT THUMB.....RT
LEFT INDEX.....LI
LEFT MIDDLE.....LM
LEFT RING.....LR
LEFT LITTLE.....LL
LEFT THUMB.....LT

ıger preparation. Once the finger or thumb is selected, it should be ɔed clean with a cleaning pad, a paper towel, or cloth. Make sure ɜ surface of the fingerprint is completely dry before inking it and ɜo make sure that no material is on the fingertip.

ɔe the fingerprint is taken, employees will initial Block 18 on the 39.

Officer's Signature

ɜ officer whose name is stamped or printed in Item 26 must sign the ɑm I-89 in ink. The signature must be an original signature and must contained in the space provided.

PORTANT: Even though other than officer personnel may process plicants only an officer's signature may be placed on an I-89. It is commended that the officer who grants the case be the one who signs at I-89. Applicants appearing for only I-89 processing (e.g., cases anted at Regional Processing Facilities) should have their LAPS cord checked by the officer designated to sign the I-89. The LAPS cord must be checked if the applicant appears without the I-688, mporary Resident Card to verify the identity of the applicant.

migration officers are defined in 8 CFR 103.1(q) and include Chief galization Officers, Supervisory Legalization Officers, Legalization judicators, Legalization Officers, Legalization Assistants, and ntact Representatives.

Waiving I-89 Requirements

ıile it is important to complete all I-89 requirements, certain tuations will occur where it will not be possible to complete the ıotograph, signature, and fingerprint requirements. In these tuations, waiving the requirements is possible. A "W" is placed in ock 18 when a waiver condition exists.

ıiver of Photograph

. is Service policy to obtain a photograph on all persons regardless ' age. A waiver of the photograph is a very serious exception and

will be permitted only for religious or ethnic reasons or physical disfigurement. Individuals wearing headresses for religious/ethnic reasons can still be photographed. A sample of the notations made on the I-89 for a waiver of the photograph appears in Appendix J.

Waiver of Fingerprint

The two reasons for waiving the fingerprint are:

A. Age - Applicants under the age of 14 and over the age of 79 are not required to be fingerprinted. However, collection of the fingerprint should be done at as early an age as possible as this adds to the security of the program and reduces the fraudulent use of the I-551 card by persons other than the card holder.

B. Physical disability - There are two types of physical disability:

   1. Temporary disability - Disability such as a wound or skin condition which has temporarily mutilated all of the applicant's fingerprints. Also, if all of the applicant's fingers and thumbs are covered by a cast or bandage, the fingerprint is waived.

   2. Permanent disability - The applicant's hands or fingers are missing. The fingerprint is waived in such cases. However, in other cases of permanent disability, such as scarred fingertips, a fingerprint should be taken, as such a fingerprint is a characteristic of the applicant even though the fingerprint ridge lines are obscured by scar tissue. When taking such a print, it is still necessary to use the fingertip which will yield the clearest, sharpest print, and be sure to note on the I-89, "BPA" (Best Print Available) and the reason for the waiver.

A sample of the notations made on the I-89 for a waiver of the fingerprint appears in Appendix J.

Waiver of Signature

The applicant's signature may be waived under the following circumstances:

1. Physical disability - Both permanent and temporary physical disability may effect the applicant's ability to sign.

2. Inability to Write - If the applicant does not know how to write, then he/she may enter an "X" in the signature space. Even though the applicant puts an "X" in the signature block the signature is considered to be waived.

NOTE: Temporary resident aliens adjusted under 245a must meet the English/History/Government requirement to be adjusted to permanent residence. If this basic citizenship requirement is not waived (under

16 years of age, 65 or older, or 50 years of age with 20 years of residence) or exempted (physically unable to comply) applicants are expected to supply the required signature.

3. Children - Infants have not learned to sign their name; therefore, their signature would be waived. Young children may or may not be able to sign so the decision to waive the signature is dependent on the specific child's ability to sign.

If the applicant's signature is waived, write a "W" immediately to the right of the words "SIGNATURE OBTAINED" in item 18 of the Form I-89 and indicate the reason from the above list, e.g., Reason 1, Reason 2, etc. An example is provided in Appendix J.

8) Mailing of I-89s to Immigration Card Facility

Completed I-89s should be forwarded to the ICF with the transmittal memorandum/roster sheet generated from the LAPS system. If the automated TM/Roster sheet is not available from LAPS, a manual TM/Roster is acceptable (see Appendix K). The TM/Roster sheet must be signed by the individual who has verified that an I-89 card is present for every entry on the TM/Roster sheet. Once signed make 2 extra copies, retaining one copy and forwarding the other copy with the original and the I-89s to:

Immigration Card Facility
2302 - 113th Street
Grand Prairie, Texas 75050

IMPORTANT: The I-89s are to be placed in the order listed on the TM/Roster sheet.

The ICF upon receipt of the I-89s will verify the shipment and if all is in order will stamp a copy of the TM/Roster sheet and return it to the submitting office, usually on a monthly basis.

9) Off-site Processing

It is possible that individuals may not be able to appear for processing. Personnel may be designated to process an applicant off-site at the convenience and discretion of the district director.

c. Returned I-89s

Every effort should be made to follow I-89 processing procedures to eliminate as much as possible the need to return I-89s to the processing office. It is in everyone's (field offices, ICF and applicants) interest to complete I-89 processing right the first time.

If some facet of initial I-89 processing is found to be inadequate by the ICF the I-89 must be returned to the processing office. The ICF will first attempt to resolve the situation at the ICF before returning the I-89. A computer generated error letter is mailed to the

appropriate office showing data concerning the responsible office, the alien, and the problem(s) involved. The letter also contains the general guidance concerning correction of errors and their subsequent return to the ICF. A sample of the error letter can be found in Appendix L.

I-89s will be returned for data entry, photograph, signature, fingerprint and TM/Roster errors and/or omissions.

d. Replacement I-551 Cards

Since the applicants will be processed for their initial I-551 cards at a legalization office or other office performing legalization work, these individuals could return to seek a replacement I-551 Card due to loss of or damage to their initial card. If faced with this situation legalization personnel will refer the individuals to regular INS offices or the appropriate sections within the office if legalization work is being done in the same office as the responsibility to adjudicate applications for replacement cards does not rest with the Legalization Program.

e. Inquiry to the Immigration Card Facility on the Status of an I-551

After applicants are processed they will receive temporary proof of permanent residence via the modification of the I-688 with the adhesive label designed for this purpose. This temporary proof document should last the individual until the I-551 card is received. Notwithstanding, individuals may return to inquire as to the status of their card. Processing personnel should inform inquirers that inquiry should not be made before 90 days has passed since I-89 processing. If 90 days has passed inquiry is made on Form G-731, Inquiry Concerning Status of I-551 Alien Registration Receipt Card. A sample of the inquiry Form (G-731) can be found at Appendix 9.

To prepare the G-731 print legibly, using a ballpoint pen or typewriter. Submit one G-731 for each alien.

Part A. This part is to be completed by the INS office initiating the inquiry. The large applicant data block is to be filled out in its entirety so that the ICF can search its records. Do not give this form to an alien to fill out and send to the ICF.

Part B. This part is to be completed by the ICF only.

Part C. This part is to show where the reply is to be sent.

1. If an answer is to go to the alien, print the alien's name and address in Block C.

2. If an answer is to go to the servicing INS office, stamp or enter that address in Block C.

3. If an answer is to go to both the alien and the service office, prepare and submit two separate G-731 forms and follow both steps a. and b. above.

3. Nonimmigrant visa cancellation and temporary I-551 processing.

A) Nonimmigrant visa cancellation

Applicants appearing for interview possessing passports may have various categories of nonimmigrant visas. The cancellation of these visas is part of permanent resident processing. Cancellation of the visas help reduce the possibility of use of the visa page in an unlawful manner.
The applicant shall not be required to present a passport or travel document solely for the purpose of having the nonimmigrant visa cancelled. A sample of a cancelled nonimmigrant visa is shown in Appendix N.

B) Temporary I-551 processing

Once applicants are adjusted to permanent residence they have the benefits that accompany that status. Proof of permanent residence, the I-551 card, must be prepared at the Immigration Card Facility in Texas. Consequently, temporary evidence of permanent residence must be provided. This will be accomplished by affixing the specially designed adhesive label to the back of the I-688 Temporary Resident Card.

If the I-688 is not presented due to loss, etc. temporary evidence of permanent residence should be provided in the following manner.

A stamp, known as the "ADIT Stamp", will be placed in the passport. If the individual has no passport the stamp shall be placed on a specially prepared I-94, arrival and departure record.

The arrival portion of the I-94 will be completed with the alien's name, date of birth, country of citizenship, and A90 million number. The admission block will be noted with a stamp (known as the "ADIT STAMP"). The stamp will be placed on the I-94 using special formula ink. A photo of the applicant must be attached to the block next to the admission block, thereby obliterating the admission number. The Service seal shall then be placed half over the admission block and half over the photo. The date placed in the "valid until" blank shall be the date representing a one-year period from the date thirty-one months from the date temporary residence was granted. As an example, if an alien was granted temporary residence on May 5, 1987, the date thirty-one months from May 5, 1987 would be December 4, 1989 and the date appearing in the I-94 valid until blank would be December 3, 1990.

The recipient of the I-94 shall be advised that the I-94 should not be surrendered at the time of any departure from the United States since it is a document for presentation at time of reentry.

A sample I-94 bearing the "Adit Stamp" is shown in Appendix 10.

4. Contingency Processing

A) Interviews

If for some reason access to an applicant's automated record (LAPS) is unavailable, the interview will still be conducted. A record of the results of the interview will be made manually on a hardcopy facsimile of the LAPS interview screen. Once access to LAPS is again available the record(s) will be updated.

Use of the hardcopy facsimile will also be used for off-site interviews when required. LAPS update will occur as soon as possible after processing personnel arrive back in the office.

Field offices will have the capability of conducting interviews even though cases are not yet scheduled in LAPS. The LAPS case record must first be reviewed. If the LAPS record reflects a case ready for interview field offices can interview the applicant. If access to LAPS is unavailable, field offices must call the RPF to assure a particular case is ready for interview.

B) Walk-ins

Applicants already in receipt of an interview notice may appear at a field office before or after their interview date. If an applicant appears before his or her scheduled date and a field office desires to change the scheduled date, the interview can be rescheduled using the interview reschedule screen. This can be done for single or multiple cases (families). Since applicants cannot be adjusted to permanent residence unless eligible (e.g., at least the 1st day of the nineteenth month after temporary residence was granted) cases cannot be rescheduled for earlier dates which would render the applicant ineligible. If an applicant appears after his/her scheduled interview date a field office may choose to conduct the interview when the applicant appears, reschedule the interview, or advise the applicant that another interview will automatically be scheduled.

5.. Replacement of I-688 - Temporary Resident Card

The public should be advised to submit the I-695 application directly to the appropriate RPF. The applicant will then receive a receipt in the mail.

Adjudication of the I-695 will be done at the RPF (as in Phase I) since the facility will have original data, and the applicant's photo which accompanied the application thus minimizing fraud in replacement documents.

Upon approval by the RPF, the applicant's I-688 camera-ready photo card and two copies of the approval notice (with the applicant's name and

address placed for window envelope mailing), one with a photo of the applicant stapled to it, are mailed to the field office. Upon receipt, the camera-ready photo card and the approval notice copy with the photo affixed are temporarily stored in a holding drawer or file cabinet. The second copy of the approval notice is mailed to the applicant with an endorsement requiring his or her appearance at the field office. When the applicant appears for I-688 processing, the stored camera-ready photo card and approval notice are retrieved. The applicant's identity is compared against the photograph and, if any doubts as to identity occur, also against the fingerprint on the I-688 camera-ready photo card. A removable stick-on number indicating the number of replacement documents issued to an applicant is affixed to the camera-ready photo card in the country of birth area that will be photographed but such that it does not obscure or cover any data contained on the card. The camera-ready card is placed in the camera. The header bar is set for a temporary resident card. The applicant is photographed. The camera-ready photo card and film packet are removed from the camera. The I-688 is removed from the film packet and laminated. The removable stick-on number is moved from the photograph area to the non-photographed side of the camera-ready photo card. The I-688 is issued to the applicant. The camera-ready photo card is returned to the RPF for replacement in the A90M file. AM 2100 security document accountability procedures are completed for the issued I-688.

Applicants approved for permanent residence will not be required to submit an application for a replacement I-688 for the sole purpose of having a card which then can be modified to reflect temporary proof of permanent residence (see section 3B).

6. WAIVER PROCESSING

Except as provided as follows, the Service may issue a waiver on any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest.

Exclusion sections that do not apply to section 245A.3 of the Act are 212(a)(14), (20), (21), (25), and (32).

Sections 212(a)(9), (10), (15), (23) (except as it relates to a single offense of simple possession or 30 grams or less of marijuana), (27), (28), (29) and (33) may not be waived. Under the permanent resident phase of legalization, waivers for 212(a)(15) are not available; however, section 245A.3(f)(4) of the regulations should be reviewed prior to a final determination of excludability.

In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under 245A(b)(1) of the Act. In the event that the alien becomes excludable under any provision of section 212(a) of the Act subsequent to the date temporary residence

was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

Applicants who indicate that they are inadmissible under a ground of excludability which may be waived under 245A of the Act who have not submitted applications for waiver of grounds of excludability on Form I-690 should be provided with that form and with advice on filing. The applicant is to be advised to file the waiver application accompanied by such evidence as may be required and the correct fee in the form of a money order, cashier's check, or bank check payable to the U.S. Immigration and Naturalization Service. The waiver application is to be filed by mail with the RPF having jurisdiction over the IO.

RPFs should not schedule or reschedule a field interview for a case accompanied by a waiver request until after a decision is made on the waiver application.

Approval of an application requiring a waiver will depend on favorable adjudication of the waiver application by the RPF. If an applicant indicates that he or she is inadmissible under a ground of excludability for which no waiver is available under section 245A of the Act, his or her application is to be denied by the RPF. Waivers of section 212(a)(9) or (10) of the Act previously obtained under section 212(h) are not valid for the purpose of an application for legalization status.

All HIV-positive applicants shall be advised that a waiver is available and shall be provided the opportunity to apply for the waiver. The special waiver provisions pertaining to HIV-positive individuals as pertaining to section 212(a)(6) should be reviewed prior to determination of any waiver under this section.

E. Fee Collection and Management Procedures - Phase II

1. Collections

Applicants submit applications and fees to Regional Processing Facilities (RPF) except for some applications for waivers or appeals which may be submitted to the appropriate legalization office or office performing legalization work. Waivers or appeals submitted in the field will be receipted in LOSS and then mailed to the RPF. Even though field locations can receipt waivers and appeals it is recommended that waivers and appeals be directly mailed by the applicant to the RPF.

2. Remittances

The fees must be in the form of U.S. postal money orders, commercial money orders and bank drafts. Personnel will examine the instruments to ensure that they meet the following requirements:

- Payment must be by postal money order, bank check, or commercial money order. NO CASH OR PERSONAL CHECKS ARE TO BE ACCEPTED.
- Payment must be in U.S. funds drawn on a U.S. bank.
- Money orders and bank checks must have drawer's signature, either written or stamped.
- Date of money order or bank check must be current (within six months) and not be beyond expiration date. If not dated, fill in current date. No post dated checks or money orders will be accepted.
- Money orders and checks should be made payable to the U.S. Immigration and Naturalization Service. However, the following are acceptable:
  - U.S. Department of Justice
  - Commissioner
  - District Director
  - U.S. Treasury

  If payee is blank, fill in with U.S. Immigration and Naturalization Service.

  - Make sure the script (word) amount and figure (dollar) amount of the payment match.

3. Fee Receipts

A menu driven personal computer based fee accounting system is used in the LOs to record fees, prepare individual fee receipts, and generate the daily register of receipts and deposit transmittal forms. (Exact procedures for fee collection work stations are included in the LOSS

procedures manual.) The RPFs will have a similar menu driven system available on LAPS to perform the same functions, and exact procedures are included in the LAPS users manual.

Fee receipt numbers will be strictly controlled to avoid duplicity and fraud in their issuance.

4. Deposits

All deposits will be made daily by the office first receiving the fee, an LO or RPF. Legalization fees will be deposited to a single account 15x5086. (NOTE: Deposits of legalization fees cannot be made along with other Service fees since the legalization fees are non-appropriated funds and other Service fees are appropriated funds).

5. Disposition of Remittances

At the end of each day, personnel will:

- Verify the collections.

- Transfer accountability and responsibility for remittances and supporting documentation to the designated employee assigned the responsibility for preparing the deposit for mailing to the lockbox site. This employee will not accept accountability and responsibility for the remittances until they have been physically counted in the presence of the employee transferring them and the employee agrees with the accuracy of the amount being transferred.

- A designated employee will collect all data and generate the daily register of receipts and deposit transmittal documentation necessary to prepare the deposits. Under the lockbox system, remittances are not required to be endorsed and will be deposited in the same order as they appear on the daily register of receipts. Calculator tapes will be run batching the checks in groups of fifty to assure that all collections are accounted for and match deposit totals.

- The remittances, calculator tapes, and the original of the deposit transmittal will be mailed by registered mail or INS contract express service (where in operation) to a lockbox bank (AM 2810.01 to .03). The lockbox site will transmit the deposit data to INS for automatic entry into the accounting system the same day that the funds are received at the site.

- Copies of the transmittal document and the daily register of receipts will be forwarded to Central Office, Finance (COFIN), Room 6321 for reconiliation with the deposit information being received from the lockbox site.

- The file copies of the transmittal document and the daily register of receipts will be maintained in the collecting office.

(Reference AM 2940.01 to .02)

o Irregularities

If remittances are missing from a deposit before delivery to the post office for mailing, the procedures set forth in AM 2812.04, item 8, Irregularities, must be followed.

If remittances are missing from the deposit when or after it reaches the bank, procedures for identifying the lost item(s) will include specifically identifying the remittance(s) lost, and notifying the office making the original deposit, along with providing instructions as to the action to be taken.

o Security

The principal officer at each location must provide accountable employees with exclusive access to appropriate storage facilities and with any safeguards necessary for the protection of INS funds in their custody. Fee collection accountability duties and responsibilities are set forth in AM 2812.01 thru .05.

All Administrative Manual references mentioned above are avilable in the Handbook entitled INS Funds and Valuables Instructions for Accountable Employees.

F. Educational Services to adults Under the State Legalization Impact Assistance Grant (SLIAG) Program.

The need to have some knowledge of the SLIAG program may present itself both at the RPF and the field office. The following summary is therefore provided to assist personnel in responding to the public. The summary was prepared by Division of State Legalization Assistance, U.S. Department of Health and Human Services (HHS).

The Immigration Reform and Control Act of 1986 (IRCA), provides for the granting of legal immigrant status to certain aliens who resided illegally in the U.S. since before January 1, 1982. Legal status is obtained in two steps. First, these aliens had to apply for temporary legal resident status between May 5, 1987 and May 4, 1988. Second, in order to remain in lawful status, these aliens must apply for permanent resident status during the 12-month period beginning 18 months from the date they were granted lawful temporary resident status.

In order to qualify for permanent resident status, the alien must fulfill several requirements. Among these is the requirement that the alien must either (1) demonstrate minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States or (2) be "successfully pursuing" a course of study recognized by the Attorney General to achieve these goals. (Aliens over the age of 65 and Special Agricultural Workers -- SAWs -- are exempted by statute from this requirement.)

Many states intend to use State Legalization Impact Assistance Grant (SLIAG) funds to provide instruction to aliens who must fulfill the English language and citizenship skills requirements. This, along with a broader range of educational services, is one of the allowable uses of SLIAG funds.

The following is a brief description of SLIAG and the manner in which SLIAG funds may be used to provide educational services to adults. ("Educational services" is one of three categories of allowable services. Different rules apply to the use of SLIAG funds for educational services provided to adults than to those provided to elementary and secondary school students. This discussion concerns requirements for use of SLIAG funds to provide educational services to adults.)

What is SLIAG?

State Legalization Impact Assistance Grants (SLIAG) are administered by the U.S. Department of Health and Human Services (HHS). HHS provides grants to States to help defray some of the costs of providing public assistance, public health assistance and educational services to eligible legalized aliens (ELAs). The program is authorized by section 204 of the Immigration Reform and Control Act of 1986 (IRCA), which appropriates $1 billion, less an amount known as the "Federal offset," each year from FY 1988 through FY 1991 for these grants. (The Federal offset is the estimated cost to the Federal government of providing

Medicaid and Food Stamps to ELAs.) The amount of each State's grant is determined by an allocation formula based equally on the State's "SLIAG-related costs" (all costs which could be reimbursed under SLIAG) and the number of eligible legalized aliens (ELAs) in the State.

How much of the SLIAG grant must be used for educational services?

The State determines how much of its grant will be used for educational services. IRCA specifies that States must use a minimum of 10 percent of each year's grant funds in each of the three categories of services -- public assistance, public health, and educational services. However, under IRCA, a State may determine that it needs less than 10 percent for a particular category of services and split the remainder of the 10% between the other two categories.

Who can receive SLIAG funds to provide educational services?

The State educational agency is the ultimate "provider" of educational services because, under IRCA, all SLIAG funds used for education must begin as payments to the State educational agency. The State educational agency, in turn, provides services to adults through local educational agencies or "other public or private non-profit organizations, including community-based organizations of demonstrated effectiveness." Local educational agencies or other organizations receiving funds from the State educational agency may elect to provide services to adults through other organizations.

Does this mean that "qualified designated entities (QDEs)" may receive SLIAG funds?

If the State educational agency determines that a QDE is a "public or private non-profit organization" as specified in IRCA, it may provide educational services to adults through that QDE. Likewise, a local educational agency, or any other organization receiving SLIAG funds from the State educational agency, may contract with QDEs to provide educational services to adults. However, neither IRCA or HHS regulations give preference to QDEs over other public nor private non-profit organizations.

In order to receive SLIAG funds, does a course of study have to be recognized by the Attorney General?

No. Neither IRCA (Section 204) nor the SLIAG regulation require courses of study to be recognized by the Attorney General in order to be reimbursable under SLIAG. States may use SLIAG funding to provide any of the educational services listed below to adults through any public or private non-profit organization. However, States may impose additional requirements, such as recognition by the Attorney General.

Recognition by the Attorney General of a course of study does not in any way guarantee SLIAG funding for that course.

What kinds of educational services may be provided?

IRCA explicitly allows States to use SLIAG funds to assist eligible legalized aliens in obtaining the English language and citizenship skills required for adjustment to permanent resident status. The SLIAG regulation (45 CFR Part 402) also authorizes use of SLIAG funds to provide to eligible legalized aliens all educational services authorized under the Adult Education Act. These include:

- instruction in basic skills to enable adults to function effectively in society (including the ability to speak, read and write the English language);

- instruction leading to the equivalent of a certificate of graduation from a school providing secondary education;

- instruction for adults with limited English proficiency;

- instruction in citizenship skills; and,

- ancillary services, such as transportation and day care.

Vocational education for adults is not authorized under the Adult Education Act and is not an allowable use of SLIAG funds.

Unlike public assistance and public health assistance, educational services funded through SLIAG are not required to be available to the general public, but rather may be targeted toward, or limited to, ELAs.

Which aliens are authorized to receive services under SLIAG?

SLIAG funds may be used to provide educational services to eligible legalized aliens (ELAs) -- those aliens granted lawful temporary or permanent resident status under sections 245A, 210, or 210A of the INA. (Aliens granted lawful resident status under other provisions of IRCA and those granted extended voluntary departure under the INS family fairness policy are not ELAs, and SLIAG funds may not be used to provide services to them.) In addition, SLIAG funds may be used to provide educational services only to those ELAs who have attended U.S. schools for fewer than three complete academic years. (An academic year is defined as the number of hours contained in the state's standard academic year for K-12).

Are there spending limits for educational services under SLIAG?

IRCA and HHS regulations limit the amount of SLIAG funds that the State education agency may pay in any fiscal year to a provider of educational services to $500 times the number of ELAs receiving educational services from that service provider during that fiscal year. (This provision limits the amount that may be paid to a service provider, not the amount that may be used with respect to an individual eligible legalized alien. Service providers may incur costs reimbursable under SLIAG in excess of $500 per ELA for some students, provided they are also providing services for other students that cost less than $500 per ELA. The average cost of the services provided by a service provider may not exceed $500 per ELA.) In no case can the

amount of SLIAG funds exceed the actual cost of providing educational services. Any "program income," e.g., tuition or fees collected by the service provider, must be accounted for in determining the amount of allowable SLIAG reimbursement. (SLIAG reimbursement is available only with respect to eligible legalized aliens who have attended school in the U.S. for fewer than three complete academic years.)

Can my organization receive SLIAG funds for services already provided to ELAs?

In general, private organizations may not be reimbursed for past costs they have incurred in providing educational services on their own to eligible legalized aliens. Only costs incurred under an agreement (e.g., contract or subgrant) with the State education agency or a local education agency would be allowable under SLIAG.

How does an organization apply for SLIAG funds?

Organizations interested in receiving SLIAG funds to provide educational services to eligible legalized aliens should contact their State Education Agency or the SLIAG contact person for their State. Only States may apply directly to the Federal government for SLIAG grants. States decide how to allocate SLIAG funds, within the statutory and regulatory guidelines. In particular, decisions as to how much SLIAG funds to use for educational services and how much, if any, of those funds should be used for contracts or subgrants with private service providers, largely are State decisions.

IRCA contains no provision for a "bypass" to private organizations in the event that a State declines to apply for SLIAG funds. If a State fails to apply to HHS by the prescribed deadline, the State is ineligible for SLIAG funds for that fiscal year. The deadline for FY 1988 funding was May 16, 1988. The deadlines for FY 1989, 1990, and 1991 are July 15, 1988, July 15, 1989, and July 15, 1990, respectively.

Where can I get more information?

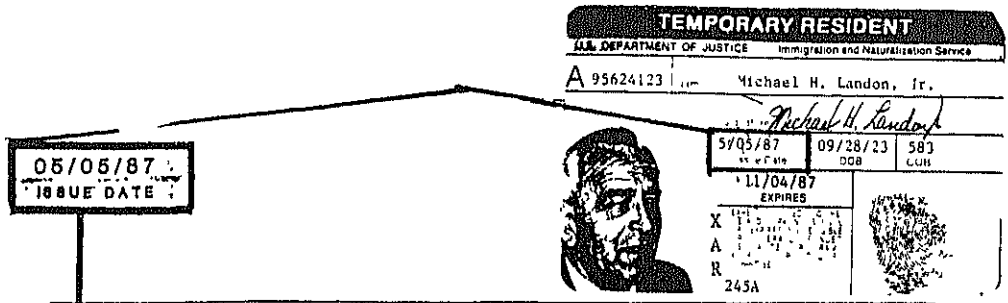
For information on individual State's use of SLIAG funds or to find out how to obtain SLIAG funds, you should contact either the State Education Agency or the State SLIAG contact.

SLIAG is authorized by section 204 of the Immigration Reform and Control Act of 1986 (IRCA). Regulations governing SLIAG are at 45 CFR Part 402 (53 Federal Register 7832ff). These are available at many public libraries.

The Federal office that administers SLIAG is:

Division of State Legalization Assistance
Office of Refugee Resettlement
Family Support Administration
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447
(202) 252-4571

APPENDIX E



MONTH GRANTED TEMPORARY RESIDENCE	MONTH ELIGIBLE TO APPLY FOR PERMANENT RESIDENCE	LAST MONTH TEMPORARY RESIDENT MUST APPLY FOR PERMANENT RESIDENCE
MAY 1987	NOVEMBER 1988	NOVEMBER 1989
JUNE 1987	DECEMBER 1988	DECEMBER 1989
JULY 1987	JANUARY 1989	JANUARY 1990
AUGUST 1987	FEBRUARY 1989	FEBRUARY 1990
SEPTEMBER 1987	MARCH 1989	MARCH 1990
OCTOBER 1987	APRIL 1989	APRIL 1990
NOVEMBER 1987	MAY 1989	MAY 1990
DECEMBER 1987	JUNE 1989	JUNE 1990
JANUARY 1988	JULY 1989	JULY 1990
FEBRUARY 1988	AUGUST 1989	AUGUST 1990
MARCH 1988	SEPTEMBER 1989	SEPTEMBER 1990
APRIL 1988	OCTOBER 1989	OCTOBER 1990
MAY 1988	NOVEMBER 1989	NOVEMBER 1990
JUNE 1988	DECEMBER 1989	DECEMBER 1990
JULY 1988	JANUARY 1990	JANUARY 1991
AUGUST 1988	FEBRUARY 1990	FEBRUARY 1991
SEPTEMBER 1988	MARCH 1990	MARCH 1991
OCTOBER 1988	APRIL 1990	APRIL 1991
NOVEMBER 1988	MAY 1990	MAY 1991
DECEMBER 1988	JUNE 1990	JUNE 1991
JANUARY 1989	JULY 1990	JULY 1991
FEBRUARY 1989	AUGUST 1990	AUGUST 1991
MARCH 1989	SEPTEMBER 1990	SEPTEMBER 1991
APRIL 1989	OCTOBER 1990	OCTOBER 1991
MAY 1989	NOVEMBER 1990	NOVEMBER 1991
JUNE 1989	DECEMBER 1990	DECEMBER 1991
JULY 1989	JANUARY 1991	JANUARY 1992
AUGUST 1989	FEBRUARY 1991	FEBRUARY 1992
SEPTEMBER 1989	MARCH 1991	MARCH 1992
OCTOBER 1989	APRIL 1991	APRIL 1992
NOVEMBER 1989	MAY 1991	MAY 1992
DECEMBER 1989	JUNE 1991	JUNE 1992

*NOTE: EVEN THOUGH THE APPLICATION PERIOD ENDED MAY 4, 1988, FOR MOST ELIGIBLE ALIENS, ONE CLASS OF ELIGIBLE ALIENS- THE "EXTENDED VOLUNTARY DEPARTURE" CLASS CAN APPLY UP TO DECEMBER 22, 1989 FOR TEMPORARY RESIDENCE.

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

8 CFR PARTS 100, 103, 264, AND 299

INS NUMBER: 1020R-88

Applicant Processing for the Legalization Program; Conforming Amendments.

AGENCY: Immigration and Naturalization Service; Justice.

ACTION: Interim Rule with request for comments.

SUMMARY: This rule amends certain regulations to conform to regulation changes published elsewhere in this issue. These provisions relate to the processing of applicants for permanent residence under the Legalization Program as authorized by the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this rule is to effect the necessary changes to the regulations brought about by the Service's intent to process applications for adjustment of temporary resident aliens for lawful permanent residence status.

EFFECTIVE DATE: Interim rule is effective November 7, 1988. Comments must be received on or before (insert thirty days from date of publication in the Federal Register)

ADDRESSES: Written comments should be mailed in triplicate to Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street, N.W., Washington, D.C. 20536 or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Raymond B. Penn, Assistant Commissioner, Legalization, (202)786-3658.

APPENDIX F

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (IRCA), Pub.L. 99-603 was enacted on November 6, 1986. The Service published implementing regulations at 52 FR 16205, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987; 53 FR 9274, March 21, 1988; 53 FR 9862, March 28, 1988, and at 53 FR 23382, June 22, 1988.

At 53 FR 18096, May 20, 1988, the Service published in the Federal Register a notice making available to the public the preliminary working draft regulations. More than 170 copies of the preliminary working draft were forwarded to requesters. As a result, 135 individuals and interested organizations submitted written comments. The comments were reviewed and given serious consideration.

In response to the comments received on the preliminary working draft, the Service published a notice of proposed rulemaking at 53 FR 29818 in the Federal Register on August 8, 1988. The proposed rule changed the list of legalization offices; included other Service offices besides legalization offices where interviews will occur; allowed for the approval or denial of permanent resident applications at the district director level; set the application fee; provided the display control number and edition date for Form I-698; allowed for the district director to certify decisions to the Administrative Appeals Unit; and allowed for the submission of I-695, Application for Replacement of Form I-688A, Employment Authorization, or Form I-688, Temporary Residence Card (Under Pub.L. 99-603), to other Service offices besides legalization offices. Eighty-six comments, representing the views and concerns of 183 individuals, attorneys, state agencies, special interest groups, educational and other interested organizations and

associations were received in response to the proposed rule. All comments were reviewed and seriously considered in preparing this interim rule. The Service appreciates the time and significant efforts put forth by all concerned parties.

Summary of the interim rule.

On November 6, 1986, the Immigration Reform and Control Act of 1986, Pub.L. 99-603 was enacted to provide the opportunity for certain aliens to apply for temporary resident status in the United States, and, under certain conditions, to subsequently apply for permanent resident status.

Section 100.4(f) is amended to provide a list of legalization offices which will accommodate applicants for permanent residence. Several commentors stressed that the Service seriously reconsider the decision to close any legalization office for various reasons such as convenience to the public. The Service has carefully considered decisions to close legalization offices. The volume of application receipts (including Special Agricultural Worker applications) is a main factor studied before a decision is made to close a legalization office. The Service agrees with the commentors that the maximum number of legalization offices should remain open within funding constraints. In addition to the legalization offices listed in section 100.4(f) the following Service offices will conduct interviews for permanent residence.

EASTERN REGION

District offices - Baltimore, MD; Buffalo, NY; Philadelphia, PA; Portland, ME; and San Juan, PR; Sub-offices - Albany, NY; Charlotte Amalie, VI;

Christiansted, VI; Camden, NJ; Hartford, CN; Norfolk, VA; Pittsburgh, PA; St. Albans, VT; and Syracuse, NY.

NORTHERN REGION

District offices - Anchorage, AK; Cleveland, OH; Detroit, MI; Helena, MT; Kansas City, MO; Omaha, NB; Portland, OR; Seattle, WA; Denver, CO; and Saint Paul, MN; Sub-offices - Boise, ID; Cincinnati, OH; Indianapolis, IN; Milwaukee, WS; Salt Lake City, UT; St. Louis, MO; and Yakima, WA.

SOUTHERN REGION

District offices - Atlanta, GA; and New Orleans, LA; Sub-offices - Charlotte, NC; Jacksonville, FL; Louisville, KY; Memphis, TN; and Oklahoma City, OK.

WESTERN REGION

District offices - Honolulu, HI; Sub-offices - Agana, GU; Reno, NV; and Tucson, AZ.

Section 103.1(n) is amended to provide for the approval or denial of applications for permanent residence by the district directors at both legalization and other Service offices. Numerous commentors raised concerns about the physical and administrative security of conducting permanent resident interviews at INS district and suboffices. Specific concerns were addressed regarding the possible breach of confidentiality of legalization casework and if district office personnel are used, the lack of experience in legalization matters. During the first phase of the program the Service received numerous compliments for the manner in which the program was handled and for not having breached the confidentiality provisions of the legislation. In developing the permanent resident phase of the legalization program, the Service is once again stressing the confidentiality provisions

of IRCA to all employees of the Service. In addition, the public can be assured that wherever possible, the legalization operations at district offices will be separate and distinct operations. However, it must be understood that due to physical restrictions at certain field sites such distinct operation may not be feasible.

Section 103.4(b) is amended to provide for the certification of decisions by the district director as well as the Regional Processing Director to the Administrative Appeals Unit.

Section 103.7(b) is amended to provide for an application fee for the filing of an I-698, Application to Adjust Status from Temporary to Permanent Resident (Under the Immigration Reform and Control Act of 1986). Nineteen comments were received concerning the fee structure proposed for the permanent resident program. Eighteen commentors clearly stated that the application fee of $75.00 per application was excessive and if the Service held to such an amount that there should be a cap on the fees for a family. After careful consideration and a review of all projected expenditures, the Service will raise the application fee to $80.00 per application but will limit the filing cost for a family to the first three members of a family (including husband, wife, and minor (under 18 years of age) children living at home) for a "family cap" of $240.00 per family. The increase in the per application fee is necessary to offset the creation of a "family cap".

Section 103.37 is removed with the information formally contained in this section now being incorporated into section 299.5.

Section 264.1(c) is amended to provide for the submission of Form I-695, (Application for Replacement of Form I-688A, Employment Authorization, or Form I-688, Temporary Residence Card (Under Pub.L. 99-603)), to legalization and other Service offices. Five comments were received requesting the appeal rights be extended to replacement of temporary resident card (I-688s). This process was established following the standards that currently exist for individuals who submit Applications for Replacement of Alien Registration Receipt Card (I-551). As individuals who will be adjusted will be lawful permanent residents of the United States they will no longer be entitled to the I-688 and would therefore not have a need for replacement. Further, if an individual has his or her permanent resident application denied and any subsequent appeal dismissed they would not be entitled to such documentation. Therefore, after careful consideration the Service will not modify this section.

Section 299.1 is amended to provide for the edition date for Form I-698, Application to Adjust Status from Temporary to Permanent Resident (Under the Immigration Reform and Control Act of 1986).

Section 299.5 is amended to include Form I-698, Application to Adjustment Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603); Form I-699, Certificate of Satisfactory Pursuit; and Form I-803, Petition for Attorney General Recognition to Provide Course of Study for Legalizaton: Phase II.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of

small entities. This rule is not a major rule within the definition of section 1(b) of EO 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E. O. 12612..

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR Part 299.5.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Authority delegations (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Reporting and recordkeeping requirements.

8 CFR Part 264

Reporting and recordkeeping requirements.

8 CFR Part 299

Forms, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100--STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

2. Section 100.4(f) is amended by revising the list of legalization offices to read as follows:

§ 100.4 Field Service.

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(f) ***

LEGALIZATION OFFICES

Eastern Region

BOS - Boston, MA (XBT)

NEW - Paterson, NJ (XPT)

NYC - Manhattan, NY (XMA)

WAS - Arlington, VA (XAR)

Northern Region

CHI - Chicago, IL (XBI), Chicago, IL (XLS), Forest Park, IL (XLI)

KS - Wichita, KS (XWI)

Southern Region

DAL - Arlington, TX (XDA), Lubbock, TX (XLU)

ELP - El Paso, TX (XEL), Albuquerque, NM (XAL)

HLG - Harlingen, TX (XHA)

HOU - Houston, TX (XHU)

MIA - (Miami) Hialeah, FL (XOP), Tampa, FL (XTA), Fort Lauderdale, FL (XWS)

SNA - Austin, TX (XAU), San Antonio, TX (XSN)

Western Region

LOS - Anaheim, CA (XAH), El Monte, CA (XEM), Los Angeles, CA (XHO), Huntington Park, CA (XHP), Indio, CA (XID), East Los Angeles, CA (XLA), Buena Park, CA (XNK), Oxnard, CA (XOX), Pomona, CA (XPO), Riverside, CA (XRV), Santa Maria, CA (XSM), Santa Ana, CA (XSA), San Fernando, CA (XSR), Gardenia, CA (XTO), N. Hollywood, CA (XVN)

PHO - Phoenix, AZ (XPH), Las Vegas, NV (XLV)

SND - Escondido, CA (XES), San Diego, CA (XSD)

SFR - Bakersfield, CA (XBA), Fresno, CA (XFR), San Francisco, CA (XSF), Salinas, CA (XSI), San Jose, CA (XSO), Stockton, CA (XST)

NYC - Manhattan, NY (XMA)

WAS - Arlington, VA (XAR)

Northern Region

CHI - Chicago, IL (XBI), Chicago, IL (XLS), Forest Park, IL (XLI)

KS - Wichita, KS (XWI)

Southern Region

DAL - Arlington, TX (XDA), Lubbock, TX (XLU)

ELP - El Paso, TX (XEL), Albuquerque, NM (XAL)

HLG - Harlingen, TX (XHA)

HOU - Houston, TX (XHU)

MIA - (Miami) Hialeah, FL (XOP), Tampa, FL (XTA), Fort Lauderdale, FL (XWS)

SNA - Austin, TX (XAU), San Antonio, TX (XSN)

Western Region

LOS - Anaheim, CA (XAH), El Monte, CA (XEM), Los Angeles, CA (XHO), Huntington Park, CA (XHP), Indio, CA (XID), East Los Angeles, CA (XLA), Buena Park, CA (XNK), Oxnard, CA (XOX), Pomona, CA (XPO), Riverside, CA (XRV), Santa Maria, CA (XSM), Santa Ana, CA (XSA), San Fernando, CA (XSR), Gardenia, CA (XTO), N. Hollywood, CA (XVN)

PHO - Phoenix, AZ (XPH), Las Vegas, NV (XLV)

SND - Escondido, CA (XES), San Diego, CA (XSD)

SFR - Bakersfield, CA (XBA), Fresno, CA (XFR), San Francisco, CA (XSF), Salinas, CA (XSI), San Jose, CA (XSO), Stockton, CA (XST)

Part 103 - POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

3. The authority citation for Part 103 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301-1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356, 3 CFR 1982 Comp., p. 166.

4. In § 103.1, a new paragraph (n)(3) is added to read as follows:

§ 103.1 Delegations of authority.

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(n) ***

(3) Applications for permanent residence filed by legalization applicants pursuant to section 245A may be adjudicated by the district director having jurisdiction over the applicant's residence.

*****

5. Section 103.4(b) is revised to read as follows:

§ 103.4 Certifications.

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(b) Certification of denials of special agricultural worker and legalization applications. The Regional Processing Facility director or the district director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit)(the appellate authority designated in section 103.1(f)(2)) of this part, when the case involves an unusually complex or novel question of law or fact.

6. Section 103.7(b)(1) is amended by removing "(fee amount to be determined as required)" for Form I-698, and inserting in its place "A fee of eighty dollars ($80.00) for each application is required at the time of filing with the Immigration and Naturalization Service. The maximum amount payable by a family (husband, wife, and any minor children (under 18 years of age living at home)) shall be two hundred and forty dollars ($240.00)".

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7. Section 103.37 is removed. The display of OMB control numbers appears in section 299.5.

Part 264 - REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

8. The authority citation for Part 264 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301-1305; 66 Stat. 173, 191, 223-225; 71 Stat. 641.

9. Section 264.1(c) is amended by replacing all existing text beginning with the fifth sentence which reads "Application by an alien lawfully admitted for temporary residence..." with the following:

(c) ***Application by an alien lawfully admitted for temporary residence for Form I-688, Temporary Resident Card, in lieu of one lost, stolen, mutilated, or destroyed, shall be made on Form I-695 accompanied by the fee required by section 103.7(b)(1) of this chapter, two color photographs, (regardless of the applicant's age, unless the requirement for such photographs has been waived by the director of the legalization or Service office in his or her discretion because of hardship to an applicant who is confined due to age or physical infirmity), and when issuance of Form I-688 is desired in a changed name, by appropriate documentary evidence of such change. Any Form I-688 in applicant's possession must also be submitted with the application. An application by an alien within the United States for replacement of evidence of registration shall be submitted to the legalization or Service office having jurisdiction over the applicant's place of residence in the United States. Prior to the issuance of Form I-688, all applicants, regardless of age, shall appear at the appropriate legalization or Service office for interview and placement of fingerprint and signature on I-688 unless these requirements are waived at the discretion of the district director because of infirmity, illiteracy, or other compelling reasons. An alien who files

application Form I-695 may be required to appear in person before an immigration officer prior to the adjudication of the application and be interviewed under oath concerning his or her registration. In addition, the applicant may also be required to present a completed fingerprint card (Form FD-258). The decision on an application for replacement of evidence of registration shall be made by the Regional Processing Facility director having jurisdiction over the alien's place of residence in the United States. No appeal shall lie from the decision of the Regional Processing Facility director denying the application. An alien outside the United States shall appear at an American Consulate or Service office abroad and present a full account of the circumstances involving the loss or destruction of Form I-688. A cable shall be sent to the Service's Central Office Records Management Branch for verification of status. Subsequent to verification that temporary residence was granted, a transportation letter will be issued to the temporary resident alien.

PART 299--IMMIGRATION FORMS

10. The authority citation for Part 299 continues to read as follows:

Authority: 66 Stat. 173; 8 U.S.C. 1103.

11. Section 299.5 is amended by adding, in sequential order, Forms I-698, I-699, and I-803 to read as follows:

¶ 299.5 Display of Control Numbers

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I-698	Application to Adjustment Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603)	1115-0155
I-699	Certificate of Satisfactory Pursuit	1115-0154
I-803	Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II	1115-0156

*****

Dated:

Richard E. Norton

Associate Commissioner

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

IMMIGRATION AND NATURALIZATION SERVICE

8 CFR PART 245A

INS NUMBER: 1022R-88

ADJUSTMENT OF STATUS FOR CERTAIN ALIENS

AGENCY: Immigration and Naturalization Service, Justice

ACTION: Interim Rule with request for comments.

SUMMARY: Section 201 of the Immigration Reform and Control Act of 1986 (IRCA) provides for the legalization of certain aliens who have been residing illegally in the United States since before January 1, 1982. This section directs the Attorney General to adjust the status of a temporary resident alien to that of an alien lawfully admitted for permanent residence if the alien meets certain requirements. This rule addresses the adjustment of status of temporary resident aliens to that of aliens lawfully admitted for permanent residence.

EFFECTIVE DATE: Interim rule is effective November 7, 1988. Comments must be received on or before (insert thirty days from date of publication in the Federal Register)

ADDRESSES: Written comments should be mailed in triplicate to Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street, N.W., Washington, D.C. 20536 or delivered to Room 5250 at the same address.

FOR FURTHER INFORMATION CONTACT: Raymond B. Penn, Assistant Commissioner, Legalization, (202) 786-3658.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub.L. 99-603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment of the Immigration and Nationality Act ("INA") in 1952, reflected a resolve to strengthen law enforcement to control illegal immigration. It also reflected the Nation's concerns for certain aliens who had resided illegally in the United States. The theme of this legislation was focused upon regaining control of our Nation's borders and eliminating the illegal alien problem in this country through the firm yet fair enforcement of our Nation's laws.

The Immigration and Naturalization Service took a number of steps to ensure the new legislation would be implemented effectively, efficiently and fairly. Service officials engaged in continuing dialogue with members of the public and representatives of interested organizations on how the legalization provisions of "IRCA" would be implemented. On January 20,

1987, the Service published in the Federal Register a notice making available to the public the preliminary working draft regulation (52 FR 2115). As a result of this notice 164 comments were seriously considered by the Service and were included in the proposed rule published in the Federal Register on March 19, 1987 (52 FR 8752).

In response to the proposed rule, 549 written comments were received. After review and consideration of all comments, the Immigration and Naturalization Service published implementing regulations for the temporary resident phase of the Legalization Program at 52 FR 1620, May 1, 1987, and amending regulations at 52 FR 43843, November 17, 1987, 53 FR 9274, March 21, 1988, 53 FR 9862, March 28, 1988, and at 53 FR 23382, June 22, 1988.

The temporary resident phase of the legalization program began on May 5, 1987 and ended on May 4, 1988. The temporary resident phase of the legalization program was the first step for illegal aliens to become full and active members of the American society. The temporary resident phase of the program proved to be an overwhelming success with more than 1,700,000 applicants taking advantage of the opportunity to come out of the shadows.

In order to complete the process of becoming a lawful permanent resident of the United States, individuals who gained lawful temporary resident status during phase I of the legalization program are required to make application for such permanent resident status. Following the same openness as during the first phase of the program, the Immigration and Naturalization Service published a notice of availability of the preliminary working draft of the regulations in the Federal Register (53 FR 18096) on May 20, 1988.

he preliminary working draft addressed how the Service would implement the awful permanent resident phase of the legalization program. More than 170 opies of the preliminary working draft were made available to requestors. s a result of availability of the preliminary working draft, 135 ndividuals and interested organizations submitted written comments. All mments were reviewed, given serious consideration, and utilized in eparing the proposed rule.

ie Immigration and Naturalization Service published a notice of proposed lemaking on the implementation of the adjustment status phase of IRCA in ie Federal Register (53 FR 29804) on August 8, 1988. Eighty-six comments, presenting the views and concerns of 183 individuals, attorneys, state encies, special interest groups, educational and other interested ganizations and associations were reviewed and considered in preparing the nal rule. The Service appreciates the time and significant effort put rth by all concerned parties.

mmary of the Interim Rule.

e provisions of the interim rule which received a significant number of mments will be discussed separately. This final rule amends 8 CFR part 5a.3 created under the provisions of the May 1, 1987 final rule published the Federal Register at 52 FR 16205. This final rule includes all anges made from the proposed rule which include the requirements for tain temporary resident aliens, who are otherwise eligible, to adjust eir status to that of aliens lawfully admitted for permanent residents of e United States and the procedures to be used during this process.

Under the provisions of the Immigration Reform and Control Act of 1986, a temporary resident alien who has resided in the United States for a period of eighteen (18) months may make application for permanent resident status during the twelve month period beginning on the day after the temporary residence period has been completed. Since the beginning date of the application period falls on a weekend, the Service will, for the mutual convenience of all concerned, begin accepting applications on November 7, 1988, the first workday after November 6, 1988. The Service realizes that applications could be received at Regional Processing Facilities prior to November 7, 1988 or prior to the date an alien would be considered eligible to file an application. Therefore, as a convenience to the public, the Service will hold such applications up to 60 days prior to the alien's eligibility date. In these instances, the application will be considered as "filed" on the applicant's eligibility date.

Numerous comments were received addressing concerns with the processing method outlined by the Service in the proposed rule. The commentors stated that by utilizing a direct mail approach the Service would likely lose the consistency of decisions which have come forth during the temporary resident phase of the program; many applications may get lost in the mail; the applicant's due process rights may be violated if the adjudicative decision is rendered at an INS field or legalization office without benefit of "the record"; and the Service should allow filing of applications at legalization and other field offices.

The following summarizes the processing method that was proposed by the Service for the processing of applications for permanent residence during

this phase of the legalization program: The Service proposed utilizing a processing method that features direct mail of applications to four Regional Processing Facilities (RPFs) located at Williston, Vermont (Eastern); Lincoln, Nebraska (Northern); Dallas, Texas (Southern); and Laguna Niguel, California (Western). After preliminary processing of applications at the Regional Processing Facilities, applicants will be interviewed at selected Service offices (including district offices, suboffices, and legalization offices) throughout the country. The adjustment of temporary resident aliens to permanent residence will consist of five major segments: Pre-submission of applications; Regional Processing Facility processing (pre-interview); INS field and legalization office processing; Regional Processing Facility processing (post-interview); and Immigration Card Facility (ICF) processing.

In the pre-submission of applications segment the Service will distribute information and forms for the adjustment to permanent resident phase of the legalization program. An extensive publicity and outreach campaign conducted by the Service helped produce the largest legalization program in world history. In response to the proposed rule commentors urged the Service to continue these publicity and outreach efforts for phase II of the legalization program. The Service is confident that awareness of the legalization program is high. In testimony before the Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary United States Senate, the Government Accounting Office reported that a market research study found that 92 percent of undocumented Hispanics were aware that the legalization program exists (over 84% of the legalization phase I applicants were Hispanic). The publicity and outreach campaign for Phase II will be

more selective since the Service knows who the temporary residents are and where they reside. This being the case, local level publicity and outreach methods should be very effective and will be used in conjunction with national efforts.

In the Regional Processing Facility (RPF) processing (pre-interview) segment, all pre-interview processing tasks (e.g., data entry, fee receipting, application review, scheduling of interviews, etc.) will take place. If during the review of the application at the Regional Processing Facility it is determined that the applicant has met all eligibility requirments (continuous residence, English language/U.S. history and government, etc.) and there was no indication of fraud in the Phase I, the application may be approved. In this situation, the applicant would be notified of such approval by the RPF and would only be scheduled for processing at the INS field or legalization office for an Alien Registration Receipt Card (I-551).

In the INS field and legalization office segment, the applicants will be interviewed as well as processed for an Alien Registration Receipt Card (I-551). The interview may include an English language/U.S. history and government examination for those applicants who wish to satisfy the standards for Section 312 of the Immigration and Nationality Act.

In the RPF processing (post-interview) segment, appeal processing and other post-interview administrative procedures will occur.

In the final segment, the Immigration Card Facility processing segment, Alien Registration Receipt Card (I-551) production will be completed and the card will be mailed to the address specified by the alien as his or her place of residence.

The Service considers direct mail of applications to a regional facility as a viable and cost effective way of doing its business. The Service has had substantial experience in the direct mail realm and has enjoyed considerable success with the direct mail of adjudicative casework to the Regional Service Centers. This process has achieved reduced processing time, consistency of processing, and has been extremely cost effective. With regard to the due process question, it must be understood that the record will be reviewed in totality prior to the final adjudicative decision. If the final decision is adverse to the applicant, the individual will have the right to submit an appeal through the administrative appeal procedures that have been established. The Service has and will continue to ensure that all applicants will be afforded the rights that they are entitled to. Upon consideration of the comments received the Service will maintain its position of the processing method to be utilized; however, the Service will clearly state that the entire record of proceedings will be reviewed prior to issuing a final adverse decision at an INS field office.

Section 245a.1(h) is being amended to permit intending residents to fulfill employment duties abroad without having their absence from the United States affect their ability to meet applicable residence requirements for adjustment from temporary resident to permanent resident status. The Service received comments suggesting expansion of the definition. These

comments were considered and the definition will be changed as proposed to allow the Service the flexibility to permit brief and casual absences from the United States that reflect an intention on the part of the alien to adjust to permanent residence. Section 245a.3(b)(2) will also be amended to reflect this change.

New Section 245a.1(r) is being added to define the term "in good-standing" as used in referring to qualified designated entities (QDEs) under 8 CFR 245a.3(b)(5). Numerous comments were received concerning this definition. Several commentors suggested that the Service should extend the cooperative agreements with QDEs while others suggested that the Service should not. The Immigration Reform and Control Act of 1986 (IRCA) in section 201 provides for filing of applications for temporary resident status with either the Attorney General or with a qualified designated entity. The statute does not provide for a like situation for the filing of applications for permanent residence. Consequently, the Service will neither extend nor expand QDE cooperative agreements. Other commentors suggested revisions to the definition. The Service considered these comments and will retain the definition appearing in the proposed rule.

New Section 245a.1(s) is being added to define the term "satisfactorily pursuing" as used in section 245A(b)(1)(D)(i)(II) of the Act. Numerous comments were received on this section. In general, most commentors supported the Service's proposal of the various options an applicant could pursue in order to meet the definition. The Service is genuinely concerned that temporary residents enter the mainstream of American society in a fair and equitable manner within the statutory framework provided by the

Congress. Comments received on section 245a.1(s)(1) recommended the Servi return to the preliminary working draft figure of a minimum 60 hour course instead of the 100 hour course in the proposed rule. Several commentors were concerned that the 100 hour course requirement would financially strai course providers by placing additional demands on teacher and classroom resources. In addition, temporary residents would have to pay more for suc courses as the costs would have to be passed on. The Service, therefore, will return to the standard recommended by the study it commissioned and will stipulate a minimum 60 hour course length. Several commentors suggested that completion of 30 hours of a course of study was not responsive to the needs of the legalized alien community and that the Service should consider increasing the minimum attendance time to ensure that students have made true effort and progress to achieve the goals specified by Congress. After serious consideration the Service will modify the minimum requirement by increasing the minimum attendance time to 40 hours of a 60 hour course of study.

Commentors generally supported section 245a.1(s)(2), with the State of New York Department of Education suggesting that the general equivalency diploma (GED) be gained in the English language. The Service feels this suggestion has merit and consequently will accept a GED gained in a language other than English only if the GED English proficiency test has been passed.

Commentors considered proposed section 245a.1(s)(3) unclear and vague. The meaning of the "period of one year" and the lack of specificity regarding the course content were concerns. The Service will rewrite this section to qualify the period of one year as one "academic" year as opposed to a

calendar year, and will establish that the curriculum experienced by the individual include at least 40 hours of instruction in English and U.S. government.

Comments similar to those received on section 245a.1(s)(3) were received on section 245a.1(s)(4). Commentors were concerned about the adequacy and quality of courses provided by entities not normally associated with education. The Service believes that the certification process provided for will address these concerns and is confident that this section will not provide a means for individuals to avoid fulfilling the "satisfactorily pursuing" requirement.

The Service will also change proposed section 245a.1(s)(5) in response to several worthwhile suggestions. Commentors expressed concern that there exists a wide variety of proficiency among temporary resident aliens and it is not really possible to measure equivalency to a 40 hour enrollment in a designated course. One commentor also questioned the need for a "statement of intent" to pursue further education if the test is to serve as an optional equivalency to a course of study. The Service feels the test option is needed for three reasons: first, to help ease the strain on course provider resources; second, to offer an alternative to temporary resident aliens who have the knowledge and do not need to attend a time-consuming course; and to minimize the length of the Phase II interviews. Consequently, section 245a.1(s)(5) is being rewritten to set the standard that the proficiency test indicate that the applicant possesses the ability to read and understand minimal functional English within the context of the history and government of the United States. The results

must be accompanied by an attestation by the applicant that they had completed at least 40 hours of home study prior to being tested. Home study may be any combination of studies that will allow the applicant to pass a proficiency test established by the Service. The Service also concurs that a statement of intent is not necessary and that provision has been deleted.

New section 245a.1(t) is being added to define the term "minimal understanding of ordinary English" as used in section 245A(b)(1)(D)(i) of the Act. The comments received in response to the preliminary working draft were most favorable and the Service therefore did not change the definition in its proposed rule. Comments received in response to the proposed rule were still generally favorable; however, commentors questioned the inclusion of the term "written communication". The statute provides that applicants meet a basic citizenship skill requirement similar to section 312 requirements of the Immigration and Nationality Act. Indeed, the passing of a "section 312" type examination at the time of interview for permanent residence will serve to relieve the individual of the basic citizenship skill requirement at the time of application to petition for naturalization. The Service feels that the definition as written is appropriate and consistent with Congressional intent that temporary resident aliens acquire an understanding of English.

New Section 245a.1(u) is being added to define the use of a curriculum in a course of study recognized by the Attorney General. As with comments received in response to the preliminary working draft, commentors urged the Service to allow for the use of texts similar to the Federal Citizenship Text series (1987 edition). The Service agrees, but will establish a

condition that the similar texts be used in addition to but not in lieu of the Federal Citizenship Text series. The Service realizes that there may be training materials, besides the Federal Textbook series that may achieve the goals established under this section. The Service is willing to consider any such materials for use in this program. The definition is also changed to reflect the 60 hour course length requirement. Finally, the definition is changed to identify that what is to be taught should be words and phrases in ordinary, everyday usage. This change was made in response to commentors' suggestions for clarification of what is to be taught.

Section 245a.3(a) is being amended to provide for the acceptance of applications at Regional Processing Facilities. A wide range of comments were received concerning this section. Commentors were concerned that temporary residents may not be able to determine when they are eligible to apply for permanent residence. The statute directs that a temporary resident alien can apply for permanent residence during a one-year period beginning on the first day of the nineteenth month after the date of granting of temporary residence. Temporary resident aliens will be able to determine when they can apply by checking the date indicated on the fee receipt Form I-689, which was produced as a result of their application for temporary residence. The Service plans to publicize the above information through outreach efforts (e.g., toll-free information number, informational forums, etc.). The Service will also be mailing notices to temporary resident aliens reminding them to file applications for permanent residence. In the proposed rule's supplementary information section the Service stated its intention, as a convenience to the public, to hold applications received at Regional Processing Facilities up to 60 days prior

to the alien's eligibility date. This 60 day period did not appear in section 245a.3(a) in the proposed rule as intended. It is therefore added at this time.

Section 245a.3(b)(2) is being amended in two respects. In response to commentors' suggestions the Service will expand this section to assist individuals in returning to the United States in compliance with the 30/90 day rule. Individuals will now have the opportunity to establish that absences exceeding 30/90 days were due to emergent reasons or circumstances beyond the alien's control. This section is also changed by replacing the word "or" with "and" where it appears after the term "(30) days," for clarification purposes.

Section 245a.3(b)(3) is being amended to correct an error by changing the paragraph reference from "(f)" to "(g)".

Section 245a.3(b)(4)(ii) is being amended to correct an error by adding the correct paragraph reference (b)(4)(i). This section is also amended in response to comments that the ages of 16 and 65 be calculated from a specific point in time. Several comments were received concerning the Service's proposal to waive the basic citizenship requirements of the Act for applicants under the age of 16, applicants age 65 and older, and applicants physically unable to comply. Most of the commentors supported the Service's exercise of discretion in this matter. Four commentors requested clarification of the term "physically unable" and recommended that the Service exempt persons with a developmental or learning disability from these requirements. The Service has given these comments serious

consideration. However, to extend the exemption to persons with developmental or learning disabilities on a blanket basis would be inconsistent with the criteria and precedence established in OI 312.1(1)(2)(iii) of the Act, as amended, which holds that an exemption from the ability to speak and understand, as well as read and write English, requires a physical disability of a nature which renders the applicant unable to acquire all four citizenship skills. The Service is amending § 245a.3(b)(4)(ii) to conform with this provision.

Two commentors suggested that the upper age parameter for a waiver be reduced from age 65 to age 50 to be consistent with naturalization requirements. Section 245A(b)(1)(D)(ii) of the Act provides an exception for elderly individuals. The statute specifically states that the Attorney General may waive all or part of the basic citizenship skills requirements in the case of an alien who is 65 years of age or older. Therefore, the upper age limit will remain at 65. However, the Service will allow individuals over 50 years of age and who have been living in the United States for at least twenty years to also be exempt from the requirements of Section 245A(b)(1)(D)(i) of IRCA. Evidence must be submitted at the time of application for permanent residence pursuant to requirement contained in § 245a.2(d)(3) of this chapter to establish the twenty year qualification. This is consistent with the requirements found in 312 of the INA. Four commentors recommended that the requirements be waived for applicants under the age of 18 or 19. The Statute does not provide an exception for youthful applicants. However, the Service believes that it is fair and reasonable to waive the basic citizenship requirements for applicants under the age of 16.

Two commentors requested clarification of who is eligible for the waiver and one commentor requested clarification as to when the waiver would take effect. § 245A(b)(4)(ii) is being amended to resolve these two points.

New Section 245a.3(b)(4)(iii) is being added to address the examination for basic citizenship skills. Over 40 comments were received concerning this section. In general, commentors felt that the Federal Citizenship Texts were too difficult for the temporary resident aliens. The Service intends to continue to operate a generous and liberal legalization program as the Congress intended. Consequently, the test questions will be selected from a list of 100 standardized questions developed by the Service instead of the review questions provided at the end of each chapter of the Federal Citizenship texts. Commentors also suggested the Service allow for a 6 month retest period even if an applicant's 12 month period of eligibility expires before the 6 month retest period ends. The Service concurs and will provide for an unrestricted 6 month retest period.

New Section 245a.3(b)(4)(iv) is being added to address the providing of a "Certificate of Satisfactory Pursuit" to satisfy the basic citizenship skills requirements. The wording of this section differs from that found in the proposed rule in that, for clarification purposes, the Service enumerates the various forms of evidence an applicant can submit to establish satisfactory pursuit. Several commentors suggested that applicants must be enrolled and attending a recognized course of study at the time of application for permanent residence. The Service cannot agree since it is probable that certain applicants have already attended a recognized course of study. To require applicants to be enrolled and

attending a recognized course of study at the time of application would not be reasonable. The Service, therefore, will not change its position on this issue from that stated in the proposed rule.

New Section 245a.3(b)(4)(v) is being added to set the time period after which the Service will accept enrollment in a recognized course of study and issuance of Certificates of Satisfactory Pursuit. The Service has set this time period as May 1, 1987 as it is the date the regulations for Phase I of legalization were published in the Federal Register.

Section 245a.3(b)(5) of this chapter is being amended to allow for the certification of educational programs by district directors locally as the need arises, as well as the certification of national programs by the Outreach Program of INS. This section is also being amended to clarify the meaning of qualified designated entities as used in this section. Several commentors suggested the Service accept any course providers who have been already certified by State Education Agencies responsible for funding of State Legalization Impact Assistance Grants (SLIAG). The statute places the responsibility for recognizing acceptable courses of study with the Attorney General. The Service, therefore, will not implement this suggestion but will certainly consider the fact that certain course providers have already been certified by State Education Agencies when these course providers petition to the Service for certification.

New Section 245a.3(b)(6) is being added to provide for a "notice of participation" to be submitted to the district director by institutions of learning or qualified designated entities in good-standing (section

245a.3(b)(5)(i)(A)-(C). Commentors suggested that the Service modify the language to allow greater flexibility in the submission of a "notice of participation". The Service agrees and will provide that notices can also be submitted within thirty (30) days after the creation of the course of study. Concerning the compilation of lists of courses, certain commentors urged the Service to develop the lists at a national level. While the Service agrees in concept it is impractical as such a list would contain hundreds of courses. The Service will, however, provide that the Director of the Outreach Program maintain lists of courses recognized on the national level and will instruct district directors to disseminate district lists as widely as possible.

New Section 245a.3(b)(7) is being added to explain the fee structure for courses. Commentors expressed concern that excessive fees not be charged. The Service agrees with these comments and in response will provide that district directors coordinate efforts with State Departments of Education to assist in establishing standard fee schedules. In order to further protect individuals the Service will provide that once a fee is established, any change in fee without prior approval of the district director may result in the decertification of a course provider.

New Section 245a.3(b)(8) is being added to provide information on the Federal Textbooks on Citizenship. This section addresses the availability of the Federal Textbooks for interested parties.

New Section 245a.3(b)(9) is being added to address the maintenance of student records by course providers. One commentor suggested for

clarification purposes that direction be provided in the recording of an individual's name. Consequently, the Service will provide the name of an individual be copied exactly as it appears on the I-688A (Employment Authorization Card) or I-688 (Temporary Resident Card).

New Section 245a.3(b)(10) is being added to address the issuance of the Certificate of Satisfactory Pursuit (I-699). Several commentors suggested qualifications in the proposed rule concerning this section. One commentor suggested that the appropriate state agency responsible for SLIAG funding be notified of all decertifications by the district director. The Service agrees and will provide for this notification. Other commentors suggested that the Service accept certificates from course providers who are cited at some point in time after the certificates are submitted for deficiencies or decertified for reasons unrelated to fraud. The Service concurs and will accept such certificates.

New Section 245a.3(b)(11) is being added to provide for the "designated official" who will have the authority to sign certificates of satisfactory pursuit. Commentors recommended that the Service change the requirement that the name, title, and sample signature of each designated official be attached to and submitted with each certificate. It was stated that such a practice was burdensome and seemed unnecessary and that a file of such information could be kept by the district director. The Service agrees and will implement this recommendation.

New Section 245a.3(b)(12) is being added to provide for the on-site monitoring of courses of study recognized by the Attorney General. Many

comments were received which suggested limiting the scope of INS on-site monitoring or delegating the monitoring in whole or in part to other agencies or organizations such as State Departments of Education. The monitoring of course providers is necessary both to ensure that the providers are conducting adequate courses and to ensure that the applicants' needs are adequately served. The Service wishes to work in concert with the various state and local agencies to ensure course instruction is proper and meets the intent of the legislation that applicants achieve a basic understanding of citizenship skills. The Service does not intend to closely monitor established bona-fide educational providers but instead will direct most efforts toward providers who are entering into course instruction for the first time. Commentors also suggested that, as in § 245a.3(b)(10), the appropriate State agency be notified of any decertification taken pursuant to this section. The Service will provide for such notice.

New Section 245a.3(b)(13) is being added as guidance for selection of teachers who provide instruction in courses of study recognized by the Attorney General as defined at section 245a.3(b)(5) of this chapter. Several commentors agreed with the Service's position that the implementation of a set of standards is necessary because courses vary from providers who have had extensive experience in educational services for limited English speakers to new programs with untested skills.

Section 245a.3(c)(2) is being amended to conform with the statute as it relates to general inadmissibility. The wording of the section will be changed to describe a class of ineligible aliens who are inadmissible to the United States as immigrants except those aliens who are subject to the

grounds of exclusion not to be applied for IRCA applicants: 212(a)(14); (20); (21); (25); and (32).

Section 245a.3(d)(1) is amended to provide for the filing of an application for adjustment of status to that of a permanent resident alien by direct mailing of the application to the Regional Processing Facility. Commentors expressed concern over mailing applications to the Regional Processing Facility. The Service feels direct mail is a less costly way to operate the permanent resident application phase of the Legalization Program and in many instances, will be more convenient to the alien public in that applications can be submitted without taking time off work and other activities. Large scale direct mail application operations are utilized by this and other government agencies, and the Service is confident that the direct mail method will operate successfully. The Service realizes however, that local district practices (e.g., drop boxes) may be already in operation for direct mail to Regional Service Centers, or may be added at legalization offices as a convenience to the public. If drop-box service is made available by the district director, the alien public may certainly avail itself of this alternate way to submit applications.

Section 245a.3(d)(2) is amended to provide for the district director or Regional Processing Facility director's use of discretion to temporarily retain documents for forensic examination. Commentors agreed with the Service that the submission of original documents is generally not required. The Service will reserve the right to request original documentation as necessary. Original documentation can either be requested by the director, Regional Processing Facility, or the district director.

Some commentors suggested the Service specify the exact documentation required to support the I-698 application. While the Service appreciates this concern it is not possible to exactly specify what documentation may be required as the documentary needs will vary from case to case.

New Section 245a.3(d)(4) is being added to provide for the submission of medical examination results on Form I-693 only for those applicants who applied for temporary residence and submitted an I-693 which did not reflect that a serologic test was performed to determine the presence or absence of antibody against HIV, the etiologic agent of acquired immuno-deficiency syndrome (AIDS). As of December 1, 1987, the Immigration and Naturalization Service required serologic testing for HIV infection as part of the medical examination process for aliens applying for lawful resident status under the provisions of IRCA. Commentors suggested that applicants who filed prior to December 1, 1987 and who submitted an I-693 reflecting that a serologic test for HIV was performed should not be required to submit another I-693. The Service agrees and this section will be worded accordingly. It was also recommended that those applicants who are HIV positive be advised of the opportunity to apply for a waiver of this 212(a)(6) exclusion ground. This recommendation will also be included.

New Section 245a.3(d)(5) is being added to provide for the extension of the validity of the temporary resident card (I-688) during the pendency of an application for permanent residence made under this chapter. Commentors agreed but suggested the time period be changed to one (1) year. The Service agrees and this section will be worded accordingly.

New Section 245a.3(d)(6) is being added to provide for the adjudication of an application for permanent residence based on the existing record. Commentors were concerned that an applicant may not be afforded due process rights if the entire record was not reviewed prior to the issuance of a denial. The Service will assure applicants of their due process rights and to affirm this point, will provide for the application to be adjudicated based on the existing record rather than denied for lack of prosecution if the applicant does not respond to two requests for additional information and/or documentation.

Section 245a.3(e) is amended to provide for interviews taking place at other than Service Legalization Offices. Commentors were concerned that insufficient interview opportunities would be available for applicants. The Service would like to assure the public that all eligible applicants will be able to complete the legalization process in a timely fashion. Applicants should realize, however, that the legalization program is temporary in nature and it is costly to the Service to reschedule interviews and provide numerous interview opportunities. It is in the mutual interest of all concerned that interview opportunities are kept thus helping to ensure a successful completion of the permanent resident phase of the legalization program.

Concerning section 245a.3(f)(1) commentors questioned how INS could require applicants to demonstrate basic citizenship skills when INA section 212(a)(25) is automatically waived. The regulations reflect IRCA requirements that an alien demonstrate that he or she (1) meets the requirements of Section 312 of the INA or (2) is satisfactorily pursuing a

course of study. The regulations do not exclude any applicant from eligibility because he or she cannot read. The Congress intended that legalization applicants be familiarized with American society and the basic citizenship skill requirement is indicative of this intent. The Service must implement the statute as written.

Concerning section 245a.3(f)(3) one commentor suggested the Service regulate a waiver for aliens excludable under paragraphs 212(a)(10) of the INA. The statute specifically states that waivers cannot be regulated for this ground of exclusion. The Service, therefore, will make no change in this section.

Numerous comments were received concerning section 245a.3(f)(4). Commentors suggested the Service articulate in this rule the policy of the Service concerning the operation of the special rule for determination of public charge and the determination of financial responsibility. The Service concurs and will amend this portion to include this policy guidance which in effect incorporates a two-tiered evaluation for determining whether the applicant is likely to become a public charge.

Section 245a.3(h) is amended to provide for the retention by a temporary resident alien of the temporary resident card (I-688) in the case of an adverse decision. Commentors agreed with this provision.

One commentor also suggested that applicants be afforded the opportunity to explain discrepancies or rebut any adverse information found between information submitted with the adjustment application and information previously furnished to the Service. In addition, commentors sought

ıce that work authorization would be granted until a final decision
ɜn rendered on an appeal or until the end of the appeal period if no
had been filed. Finally, the Department of Health and Human Services
ɛed clarification as to whether an alien would still be considered an
ɔle, legalized alien" for the purposes of the administration of SLIAG
g when the appeal period had ended. Such an alien would no longer be
ered an eligible legalized alien. The Service agrees with the
entioned suggestions and will incorporate them in this section.

n 245a.3(i) is amended to provide for the submission of a brief to
t an appeal after the thirty (30) day period allowing for receipt of
eal has passed. This section is also amended to provide for review of
cord of Processing (ROP) after an appeal has been properly filed.
l commentors suggested longer periods be allowed for submission of
s. The Service believes the time periods provided are sufficient for
y to submit an appeal and any supporting briefs. Consequently, the
e will not change the appeal periods.

ɔn 245a.3(k) is amended to provide for certification to the
.strative Appeals Unit of decisions on appealed cases subsequently
led back to either the Regional Processing Facility director or the
.ct director. This section is also amended to provide for
ɨication by district directors. Comments in response to the
ɲinary working draft were generally in support of the section as
ɜn. In response to the proposed rule, commentors recommended that an
tonal 30 days be allowed for the submission of a brief when a decision
ɜen certified to the AAU for consideration of "unusually complex or

novel" issues. The Service feels that time provided for the submission of a brief (section 245a.3(i)) is sufficient and will not change this section.

Section 245a.3(l) is amended to reflect the fact that the adjustment date shall be the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later. Several commentors objected to the Service proposing to have the adjustment date the date of approval of the application for permanent residence. Various valid reasons were cited. These include precedence for rollback afforded to refugees and asylees, consistency with the temporary resident phase of the legalization program, and delays in the adjustment date caused by slow processing.

New section 245a.3(m) is being added to address confidentiality during the permanent residence phase of the Legalization Program. Commentors expressed their concern about confidentiality. The Service desires to reinforce the confidentiality provisions of IRCA and therefore is adding this new section. Several commentors objected to the inclusion of 245a.3(n)(4), stating that this provision contravenes the statute concerning the use of information supplied by applicants. The Service supports the provision as written, however; the language found in the statute (section 245A(a)(1)(C)) is indicative of Congressional intent that information supplied to the Service by legalization applicants assist in the determination of applications for benefits for relatives of applicants and to support applications for naturalization.

New section 245a.3(n) is being added to provide for the rescission of adjustment of status under section 245a pursuant to the guidelines set forth in section 246 of the Immigration and Nationality Act.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information Collection Requirements contained in this regulation have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 245a is revised to read as follows:

Authority: Pub.L. 99-603, 100 Stat. 3359, 8 U.S.C. 1101 note and Pub.L. 100-204, 101 Stat. 1331.

2. The heading for Part 245a is revised to read as follows:

PART 245a - ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB.L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB.L. 100-204, SECTION 902

3. In § 245a.1, paragraph (h) is revised and paragraphs (r), (s), (t), and (u) are added to read as follows:

§ 245a.1 Definitions.

*** (h) The term "brief and casual absences" as used in section 245A(b)(3)(A) of the Act permits temporary trips abroad as long as the alien establishes a continuing intention to adjust to lawful permanent resident status. However, such absences must comply with section 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

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(r) A qualified designated entity in good-standing with the Service means those designated entities whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not allowed to lapse by the Service prior to January 30, 1989 (the expiration date of the INS cooperative agreements for all designated

entities), or those whose agreements were not terminated for cause by the Service subsequent to January 30, 1989.

(s) "Satisfactorily pursuing," as used in section 245A(b)(1)(D)(i)(II) of the Act, means:

(1) an applicant for permanent resident status has attended a recognized program for at least 40 hours of a minimum 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English/citizenship course prescribed by the recognized program in which he or she is enrolled (as long as enrollment occurred on or after May 1, 1987, course standards include attainment of particular functional skills related to communicative ability, subject matter knowledge, and English language competency, and attainment of these skills is measured either by successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these); or

(2) an applicant presents a high school diploma or general equivalency diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if the GED English proficiency test has been passed; or

(3) an applicant has attended for a period of one academic year, a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the

curriculum included at least 40 hours of instruction in English and U.S. government); or

(4) an applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively if necessary, as long as enrollment occurred on or after May 1, 1987) by the district director or the Director of the Outreach Program under § 245a.3(b)(5)(i)(D); or

(5) an applicant attests to the fact that they have completed at least 40 hours of home study and passes a proficiency test for legalization, such test being given by qualified administrators (e.g., State Departments of Education and their designated educational agencies) and indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States.

(t) Minimal understanding of ordinary English as used in section 245A(b)(1)(D)(i) of the Act means an applicant can satisfy basic survival needs and routine social demands. The person can handle jobs that involve following simple oral and very basic written communication.

(u) "Curriculum" means a defined course for an instructional program. Minimally, the curriculum prescribes what is to be taught, how the course is to be taught, with what materials, and when and where. The curriculum must: (i) teach words and phrases in ordinary, everyday usage; (ii) include the content of the Federal Citizenship Text series

as the basis for curriculum development (other texts with similar content may be used in addition to, but not in lieu of, the Federal Citizenship Text series); (iii) be designed to provide at least 60 hours of instruction per class level; (iv) be relevant and educationally appropriate for the program focus and the intended audience; and (v) be available for examination and review by INS as requested.

4. Section 245a.3 revised to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) Application period for permanent residence. An alien who has resided in the United States for a period of eighteen (18) months after the granting of temporary resident status may make application for permanent resident status during the twelve month period beginning on the day after the requisite eighteen months' temporary residence has been completed. The date of adjustment to lawful temporary resident status is the date indicated on the fee receipt, Form I-689. The eligibility period for lawful permanent residence under section 245A(b)(1) of the Act will begin on November 7, 1988. Applications received at the Regional Processing Facilities not more than 60 days prior to the beginning of an alien's twelve month application period will be held by the Service and processed but will not be considered properly filed until the beginning of the eligibility period.

(b) Eligibility. Any alien physically present in the United States who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been revoked or terminated, may apply for adjustment of status to that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status;

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purposes of this part if, at the time of applying for adjustment from temporary to permanent resident status, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date lawful temporary resident status was granted and the date permanent resident status was applied for, unless the alien can establish that due to emergent reasons or circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director that he or she did not, in fact, abandon his or her residence in the United States during such period;

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (g) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

(4)(i)(a) Can demonstrate that the alien either meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); or, (b) is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) The requirements of paragraph (b)(4)(i) of this section must be met by each applicant, except for those individuals who are under the age of 16 and those individuals who are 65 years of age or older as of the date of application for permanent residence under this part; or individuals over 50 years of age who have resided in the United States for at least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirements contained in Section 245a.2(d)(3) of this chapter. These requirements shall also be waived for those who are physically unable to comply.

(iii) (A) Literacy and basic citizenship skills may be demonstrated for purposes of complying with paragraph (b)(4)(i)(a) of this section by speaking and understanding English during the course of the interview and processing for permanent resident status. An applicant's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship at the elementary

literacy level. The test of an applicant's knowledge and understanding of the history and form of government of the United States shall be given in the English language. The scope of the testing shall be limited to subject matter covered in the revised (1987) Federal Textbooks on Citizenship or other approved training material. The test questions shall be selected from a list of 100 standardized questions developed by the Service. In choosing the subject matter and in phrasing questions, due consideration shall be given to the extent of the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his or her knowledge and understanding.

(B) An applicant who fails to pass the English literacy or educational tests at the time of the interview, shall be afforded a second opportunity after six (6) months (or earlier, at the request of the applicant) to pass the tests or submit a "Certificate of Satisfactory Pursuit", Form I-699. The second interview shall be conducted prior to the denial of the application for permanent residence and shall be based solely on the failure to pass the literacy requirements. An applicant whose 12-month period of eligibility expires prior to the end of the six-month re-test period, shall still be accorded the entire six months within which to be re-tested.

(iv) To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at section 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" issued by the designated school or program official attesting

to the applicant's satisfactory pursuit of the course of study as defined at section 245a.1(s)(1) and (4) of this chapter; or a high school diploma or General Equivalency Diploma (GED) under section 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under section 245a.1(s)(3) of this chapter; or evidence of having passed a proficiency test under section 245a.1(s)(5) of this chapter. Such applicants shall not then be required to demonstrate that they meet the requirements of section 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided they are otherwise eligible. Evidence of "Satisfactory Pursuit" may be submitted either at the time of filing Form I-698, or at the time of the interview. An applicant need not necessarily be enrolled in a recognized course of study at the time of application for permanent residency.

(v) Enrollment in a recognized course of study as defined in § 245a.3(b)(5) and issuance of a "Certificate of Satisfactory Pursuit" must occur subsequent to May 1, 1987.

(5)(i) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if it is sponsored or conducted by: (A) an established public or private institution of learning recognized as such by a qualified state certifying agency; (B) an institution of learning approved to issue Forms I-20 in accordance with Section 214.3 of this chapter; (C) a qualified designated entity within the meaning of section 245A(c)(2) of the Act, in good-standing with the Service; or (D) is certified by the district director in whose

jurisdiction the program is conducted, or is certified by the Director of the Outreach Program nationally, and (ii) the course materials for such instruction include textbooks published under the authority of section 346 of the Act.

(6) Notice of Participation. All courses of study recognized under section 245a.3(b)(5)(i)(A) - (C) which are already conducting or will conduct English and U.S. history and government courses for temporary residents must submit a Notice of Participation either to the district director in whose jurisdiction a local program is conducted or to the Director of the Outreach Program for national programs.

The Notice of Participation shall be in the form of a letter typed on the letterhead of the course provider (if available) and contain the following information:

(i) The name(s) of the school(s)/program(s).

(ii) The complete addresses and telephone numbers of sites where courses will be offered, and class schedules.

(iii) The complete names of persons who are in charge of conducting English and U.S. history and government courses of study.

(iv) A statement that the course of study will issue "Certificates of Satisfactory Pursuit" to temporary resident enrollees according to INS regulations.

(v) A list of designated officials of the recognized course of study authorized to sign "Certificates of Satisfactory Pursuit", and samples of their original signatures.

(vi) A statement that if a course provider charges a fee to temporary resident enrollees, the fee will not be excessive.

The Notice of Participation must also include evidence of recognition under 8 CFR 245a.3(b)(5)(i)(A), (B), or (C) (e.g., Certification from a qualified state certifying agency; evidence of INS approval for attendance by nonimmigrant students, such as the school code number; or by providing the INS identification number from the QDE cooperative agreement)

The Notice of Participation shall be submitted to the district director within thirty (30) days after publication of this Interim Rule in the Federal Register or within thirty (30) days after the creation of the course of study. Acceptance of "Certificates of Satisfactory Pursuit" may be delayed if the course provider fails to submit the Notice of Participation within the requisite timeframe.
Each district director shall compile and maintain lists of recognized courses within his or her district. The Director of the Outreach Program shall compile and maintain lists of courses recognized on the national level.

(7) Fee Structure. No maximum fee standard will be imposed by the Attorney General. However, if it is believed that a fee charged is excessive, this factor alone will justify non-certification of the course provider by INS as provided in parts 245a.3(b)(10) and/or (12) of this section. Once fees are established, any change in fee without prior approval of the District Director may justify de-certification.

District directors will coordinate efforts with State Departments of Education to assist in establishing standard fee schedules.

(8) The Citizenship textbooks to be used by applicants for lawful permanent residence under section 245A of the Act shall be distributed by the Service to appropriate representatives of public schools. These textbooks may otherwise be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, and are also available at certain public institutions.

(9) Maintenance of Student Records. Course providers conducting courses of study recognized under § 245a.3(b)(5) of this chapter shall maintain for each student, for a period of three years from the student's enrollment, the following information and documents:

(i) Name (as copied exactly from the I-688A or I-688)

(ii) A-number (90 million series)

(iii) Date of enrollment

(iv) Attendance records

(v) Assessment records

(vi) Photocopy of signed "Certificate of Satisfactory Pursuit" issued to the student

(10) Issuance of "Certificate of Satisfactory Pursuit" (I-699). (i) ch recognized course of study shall prepare a standardized rtificate that is signed by the designated official.
e Certificate shall be issued to an applicant who has attended a cognized course of study for at least 40 hours of a minimum 60-hour

as appropriate for his or her ability level, and is
trating progress according to the performance standards of the
h and U.S. history and government course prescribed. Such
rds shall conform with the provisions of § 245a.1(s) of this
r.
The district director shall reject a Certificate if it is
ined that the certificate is fraudulent or was fraudulently
. (iii) The district director shall reject a Certificate if it
ermined that the course provider is not complying with INS
tions. In the case of non-compliance, the district director will
the course provider in writing of the specific deficiencies and
he provider thirty (30) days within which to correct such
encies.
District directors will accept Certificates from course providers
t is determined that the deficiencies have been satisfactorily
ted.
ourse providers which engage in fraudulent activities or fail to
m with INS regulations will be removed from the list of INS
ed programs. INS will not accept Certificates from these
ers.
Certificates may be accepted if a program is cited for
encies or decertified at a later date and no fraud was involved.
The appropriate State agency responsible for SLIAG funding shall
ified of all decertifications by the district director.

Designated official. (i) The designated official is the
ized person from each recognized course of study whose signature

appears on all "Certificates of Satisfactory Pursuit" issued by that course; (ii) The designated official must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students.

(iii)(A) The head of the school system or school, the director of the Qualified Designated Entity, the head of a program approved by the Attorney General, or the president or owner of other institutions recognized by the Attorney General must specify a "designated official". Such designated official may not delegate this designation to any other person. Each school or institution may have up to three (3) designated officials at any one time. In a multi-campus institution, each campus may have up to three (3) designated officials at any one time; (B) Each designated official shall have read and otherwise be familiar with the "Requirements and Guidelines for Courses of Study Recognized by the Attorney General". The signature of a designated official shall affirm the official's compliance with INS regulations; (C) the name, title, and sample signature of each designated official for each recognized course of study shall be on file with the district director in whose jurisdiction the program is conducted.

(12) Monitoring by INS. (i) INS Outreach personnel in conjunction with the district director shall monitor the course providers in each district in order to:

(A) Assure that the program is a course of study recognized by the Attorney General under the provisions of § 245a.3(b)(5).

(B) Verify the existence of curriculum as defined in § 245a.1(u) on file for each level of instruction provided in English language and U.S. history and government classes.

(C) Assure that "Certificates of Satisfactory Pursuit" are being issued in accordance with § 245a.3(b)(10).

(D) Assure that records are maintained on each temporary resident enrollee in accordance with § 245a.3(b)(9).

(E) Assure that fees (if any) assessed by the course provider are in compliance in accordance with § 245a.3(b)(7).

(ii) If INS has reason to believe that the service is not being provided to the applicant, INS will issue a 24-hour minimum notice to the service provider before any site visit is conducted.

(iii) If it is determined that a course provided is not performing according to the standards established in either § 245a.3(b)(10) or (12) of this chapter, the district director shall institute decertification proceedings. Notice of Intent to Decertify shall be provided to the course provider. The course provider has 30 days within which to correct performance according to standards established. If after the 30 days, the district director is not satisfied that the basis for decertification has been overcome, the course provider will be decertified. The appropriate State agency shall be notified in accordance with § 245a.3(b)(10)(vii) of this chapter. A copy of the notice of decertification shall be sent to the State agency.

(13) Courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter shall provide certain standards for the selection of teachers. Since some programs may be in locations where selection of qualified staff is limited, or where budget constraints restrict options, the following list of qualities for teacher selection is provided as guidance. Teacher selections should include as many of the following qualities as possible: (i) specific training in Teaching English to Speakers of Other Languages (TESOL); (ii) experience as a classroom teacher with adults; (iii) cultural sensitivity and openness; (iv) familiarity with competency-based education; (v) knowledge of curriculum and materials adaptation; (vi) and knowledge of a second language.

(c) Ineligible aliens.

(1) An alien who has been convicted of a felony, or three or more misdemeanors in the United States.

(2) An alien who is inadmissible to the United States as an immigrant, except as provided in § 245a.3(g)(1).

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act who has not filed an application for permanent resident status under section 245A(b)(1) of the Act during the one year period which began with the nineteenth month that begins after the date the alien was granted such temporary status.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(d) Filing the application. The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I-698. The application will be mailed to the designated Regional Processing Facility having jurisdiction over the applicant's residence. Form I-698 must be accompanied by the correct fee and documents specified in the instructions.

(2) The submission of original documents is not required at the time of filing Form I-698. Copies certified as true and complete by a qualified designated entity in good-standing, an attorney, or by an alien's representative in the format prescribed section 204.2(j)(1) or (2) of this chapter may be submitted with Form I-698. Original

documents must be presented when requested by the Service. Official government records, employment or employment-related records maintained by employers, unions, or collective bargaining organizations, medical records, school records maintained by a school or school board or other records maintained by a party other than the applicant which are submitted in evidence must be certified as true and complete by such parties and must bear their seal or signature or the signature and title of persons authorized to act in their behalf. At the discretion of the district director and/or the Regional Processing Facility director, original documents may be kept for forensic examination.

(3) A separate application (I-698) must be filed by each eligible applicant. All fees required by 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check or certified bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(4) Applicants who filed for temporary resident status prior to December 1, 1987, are required to submit the results of a serologic test for HIV virus on Form I-693, "Medical Examination of Aliens Seeking Adjustment of Status, (P.L. 99-603)", completed by a designated civil surgeon, unless the serologic test for HIV was performed and the results were submitted on Form I-693 when the applicant filed for temporary resident status. Applicants who did submit an I-693 reflecting a serologic test for HIV was performed prior to December 1, 1987 must submit evidence of this fact when filing the I-698

application in order to be relieved from the requirement of submitting another I-693. Applicants having to submit I-693s pursuant to this section are not required to have a complete medical examination. All HIV-positive applicants shall be advised that a waiver is available and shall be provided the opportunity to apply for the waiver.

(5) If necessary, the validity of an alien's temporary resident card (I-688) will be extended in increments of one (1) year until such time as the decision on an alien's properly filed application for permanent residence becomes final.

(6) An application deficient in any way shall be returned to the applicant with request for correction, additional information, and/or documentation. If response to this request is not received within 60 days, a second and final request for correction, additional information, and/or documentation shall be made. If the second request is not complied with within 60 days, the application will be adjudicated on the basis of the existing record.

(e) Interview. Each applicant, regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I-551. Each applicant shall be interviewed by an immigration officer, except that the interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview.

(f) Applicability of exclusion grounds.

(1) Grounds of exclusion not to be applied. The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status: (14) workers entering without labor certification; (20) immigrants not in possession of valid entry documents; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) Waiver of grounds of excludability. Except as provided in paragraph (f)(4) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under 245A(b)(1) of the Act. In the event that the alien becomes excludable under any provision of section 212(a) of the Act subsequent to the date temporary residence was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

(3) Grounds of exclusion that may not be waived. Notwithstanding any other provisions of the Act the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (g)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under Title XVI of the Social Security Act or section 212 of Pub.L.

93-66 for the month in which such alien is granted lawful temporary residence status under subsection (a);

(iii) Paragraph (23) (narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(iv) Paragraphs (27) (prejudicial to the public interest), (28) (communists), and (29) (subversive);

(v) Paragraph (33) (participated in Nazi persecution).

(4) Determination of "Likely to become a public charge" and Special Rule. Prior to use of the special rule for determination of public charge § 245a.3(f)(4)(iii), an alien must first be determined to be excludable under 212(a)(15) of the Act. If the applicant is determined to be "likely to become a public charge," he or she may still be admissible under the terms of the Special Rule.

(i) In determining whether an alien is "likely to become a public charge" financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is like to become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income, and vocation.

(ii) The Special Rule for determination of public charge § 245a.3(f)(4)(iii) is to be applied only after an initial

determination that the alien is inadmissible under the provisions § 212(a)(15) of the Act.

(iii) Special Rule: An alien who has a consistent employment history which shows the ability to support himself or herself and his or her family even though his or her income may be below the poverty level is not excludable under paragraph (f)(3)(ii) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income and maintain his or her family without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(5) Public cash assistance and criminal history verification. Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The

icant must agree to fully cooperate in the verification ess. Failure to assist the Service in verifying information ssary for proper adjudication may result in denial of the ication.

Departure. An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exceed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

Decision. The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. Applications for permanent residence under this chapter will not be denied at local INS offices (districts, suboffices, and legalization offices) until the entire record of proceeding has been reviewed. An application will not be denied if the denial is based on adverse information not previously furnished to the Service by the alien without providing the alien an opportunity to rebut the adverse information and to present evidence in his or her behalf. If

inconsistencies are found between information submitted with the adjustment application and information previously furnished to the Service, the applicant shall be afforded the opportunity to explain discrepancies or rebut any adverse information. A party affected under this part by an adverse decision is entitled to file an appeal on Form I-694. If an application is denied, work authorization will be granted until a final decision has been rendered on an appeal or until the end of the appeal period if no appeal is filed. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding. An alien whose application is denied will not be required to surrender his or her temporary resident card (I-688) until such time as the appeal period has tolled, or until expiration date of the I-688, whichever date is later. After exhaustion of an appeal, an applicant who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted within his or her one-year eligibility period.

) Appeal process. An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) the appellate authority designated in § 103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility with the required fee

within thirty (30) days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period for submitting an appeal begins three days after the notice of denial is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional thirty (30) days will be allowed for this review from the time the Record of Proceeding is photocopied and mailed. A brief may be submitted with the appeal form or submitted up to thirty (30) calendar days from the date of receipt of the appeal form at the Regional Processing Facility. Briefs filed after submission of the appeal should be mailed directly to the Regional Processing Facility. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

Motions. The Regional Processing Facility director may reopen and reconsider any adverse decision sua sponte. When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any

briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(k) Certifications. The Regional Processing Facility director or district director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded back to either the Regional Processing Facility director or the district director will be certified to the Administrative Appeals Unit.

(l) Date of adjustment to permanent residence. The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date of filing of the application for permanent residence or the eligibility date, whichever is later.

(m) Limitation on access to information and confidentiality.

(1) No person other than a sworn officer or employee of the Department of Justice or bureau of agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection

with the Legalization Program shall be considered an "employee of the Department of Justice or bureau or agency thereof".

(2) No information furnished pursuant to an application for permanent resident status under this section shall be used for any purpose except: (i) To make a determination on the application; or, (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (m)(3) of this section.

(3) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(4) Information contained in granted legalization files may be used by the Service at a later date to make a decision on an immigrant visa petition or other status filed by the applicant under section 204(a), or for naturalization applications submitted by the applicant.

(n) Rescission.

Rescission of adjustment of status under 245a shall occur under the guidelines established in section 246 of the Act.

Date: 10/12/88

Richard E. Norton

Associate Commissioner

I-551 OR I-586 CARD DATA COLLECTION FORM

TRANSACTION 1 — INITIAL CARD

(Use the Other Side For All Other Transactions)

FORM I-89 (Rev. 2-25-86) N SIDE 1
U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

1 CARD TYPE: 1. ☑ REGULAR I-551 2. ☐ COMMUTER I-551 3 ☐ MEXICAN I-586 4 ☐ CANADIAN I-586

2 ALIEN NUMBER: A 9 0 1 2 3 4 5 6

3 DATE OF THIS I-89:

4 NAME (LAST/FIRST/MIDDLE): GOMEZ RODRIGUEZ, MANUEL

5 MOTHER'S FIRST NAME:

6 FATHER'S FIRST NAME:

7 DOB (MM/DD/YY): 0 6 2 5 6 8

8 COB:

9 CITY/TOWN/VILLAGE OF BIRTH:

10 CITY OF RESIDENCE WHEN APPLYING FOR THIS STATUS:

11 CITY OF DESTINATION AT TIME OF ORIGINAL ADMISSION:

12 LOCATION OF CONSULATE (OR INS OFFICE WHERE ADJUSTED):

13 POE/POI:

14 CLASS:

15 ADM/ADJ DATE (MM/DD/YY):

16 AMC:

17 OTHER FP:

CARD FACILITY USE ONLY

See M-226, Page 5-2 for the proper code when using OTHER than the RIGHT INDEX finger.

STAPLE PHOTO/OLD CARD HERE

18 WAIVER/REASON
FP JS
SIG SR
PHOTO LM

19 IN CARE OF:

20 NUMBER AND STREET (APT NO. IF APPLICABLE):

21 CITY:

22 STATE:

23 ZIP CODE:

24 AFFIX SEAL IN THIS SPACE

25 CERTIFICATION
I certify based upon all available information that this applicant is entitled to the immigration document for which this application has been made

R. HONDO

26 STAMPED OR PRINTED NAME OF OFFICER

Robert Hondo

27 OFFICER'S SIGNATURE

X A R

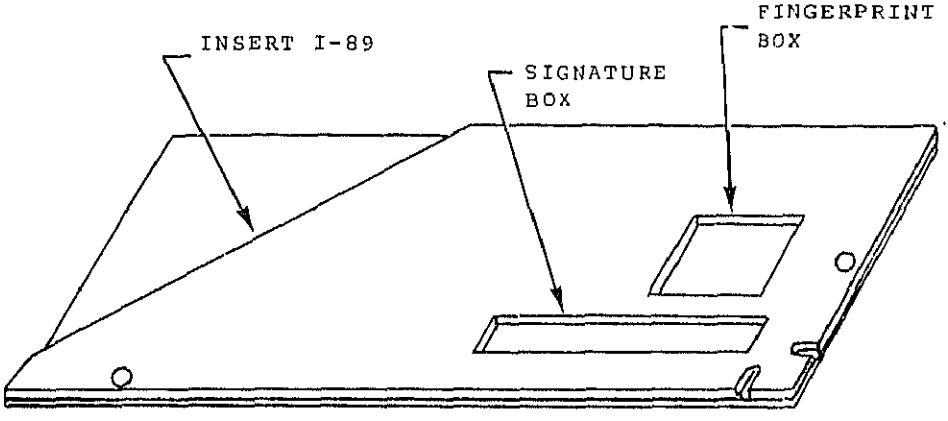
28 LOC CODE

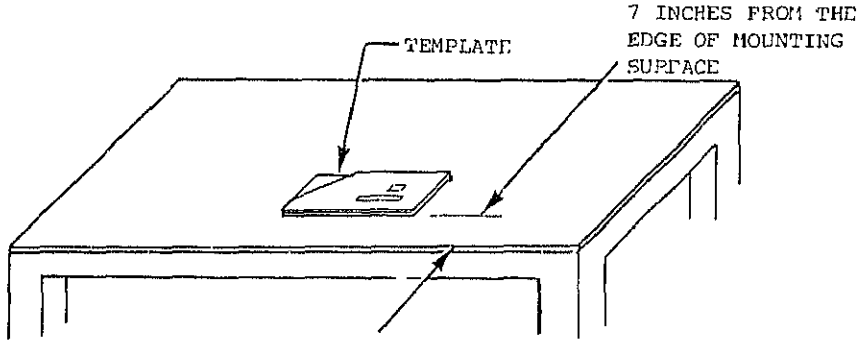
A 9 0 1 2 3 4 5 6

29 ALIEN NUMBER

Manuel Gomez Rodriguez

APPENDIX - G


INSERT I-89
SIGNATURE BOX
FINGERPRINT BOX

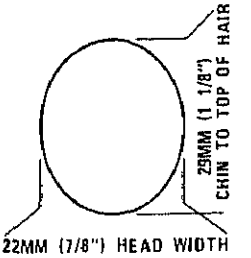

TEMPLATE
7 INCHES FROM THE EDGE OF MOUNTING SURFACE

U.S. IMMIGRATION & NATURALIZATION SERVICE

COLOR PHOTOGRAPH SPECIFICATIONS

◀ SAMPLE PHOTOGRAPH

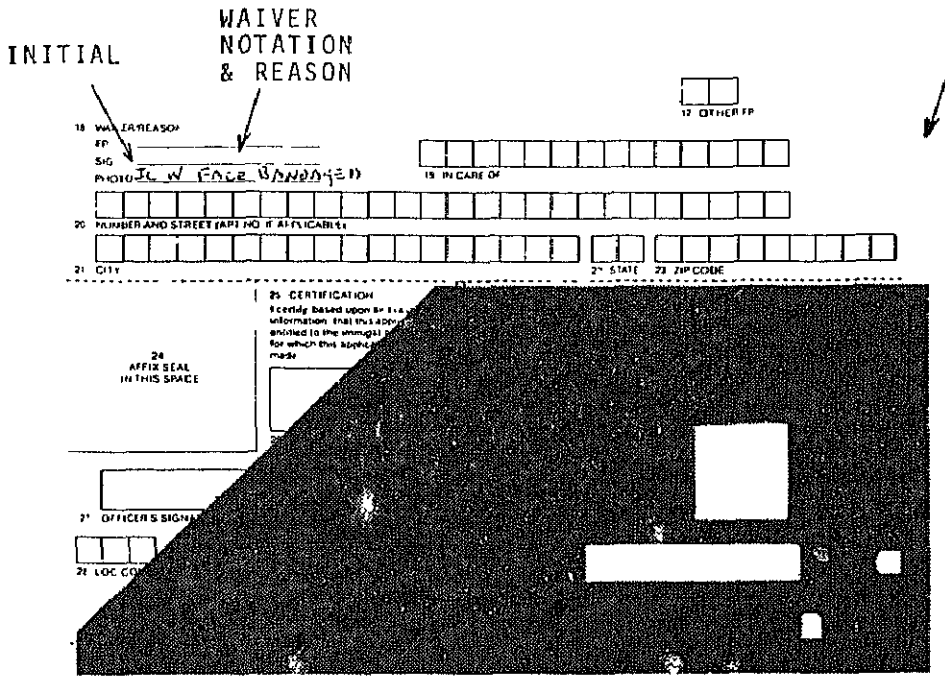
HEAD SIZE(INCLUDING HAIR) MUST FIT INSIDE OVAL ▶



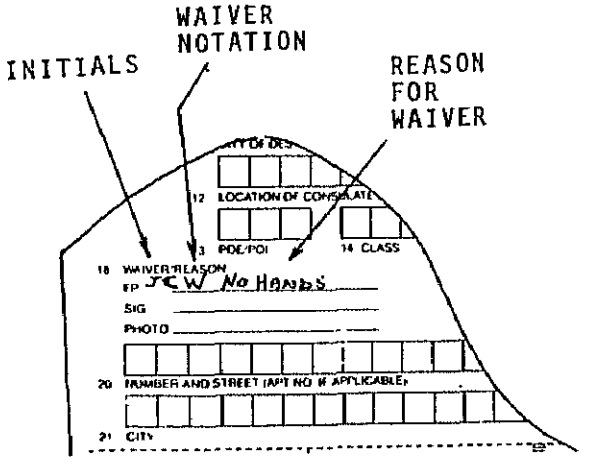
COLOR FILMS OF THE INTEGRAL TYPE, NON-PEEL-APART, ARE UNACCEPTABLE. THESE ARE EASILY RECOGNIZED AS THE BACK OF THE FILMS ARE BLACK. THE ACCEPTABLE INSTANT COLOR FILM HAS A WHITE BACKING.

- PHOTOGRAPH MUST SHOW THE SUBJECT IN A ¾ FRONTAL PORTRAIT AS SHOWN ABOVE
- RIGHT EAR MUST BE EXPOSED IN PHOTOGRAPH FOR ALL APPLICANTS, HATS MUST NOT BE WORN
- PHOTOGRAPH OUTER DIMENSION MUST BE LARGER THAN 1 ¼"^{W} x 1 ⅛"^{H}, BUT HEAD SIZE (INCLUDING HAIR) MUST FIT WITHIN THE ILLUSTRATED OVAL (OUTER DIMENSION DOES NOT INCLUDE BORDER IF ONE IS USED)
- PHOTOGRAPH MUST BE COLOR WITH A WHITE BACKGROUND EQUAL IN REFLECTANCE TO BOND TYPING PAPER
- SURFACE OF THE PHOTOGRAPH MUST BE GLOSSY
- PHOTOGRAPH MUST NOT BE STAINED, CRACKED, OR MUTILATED, AND MUST LIE FLAT
- PHOTOGRAPHIC IMAGE MUST BE SHARP AND CORRECTLY EXPOSED, PHOTOGRAPH MUST BE UN RETOUCHED
- PHOTOGRAPH MUST NOT BE PASTED ON CARDS OR MOUNTED IN ANY WAY
- TWO PHOTOGRAPHS OF EVERY APPLICANT, REGARD LESS OF AGE, MUST BE SUBMITTED
- PHOTOGRAPHS MUST BE TAKEN WITHIN THIRTY (30) DAYS OF APPLICATION DATE
- SNAPSHOTS, GROUP PICTURES, OR FULL LENGTH PORTRAITS WILL NOT BE ACCEPTED
- USING PENCIL, TO AVOID MUTILATION OF THE PHOTOGRAPHS, LIGHTLY PRINT YOUR NAME (AND A 90 MILLION NUMBER) ON THE BACK OF ALL PHOTOGRAPHS

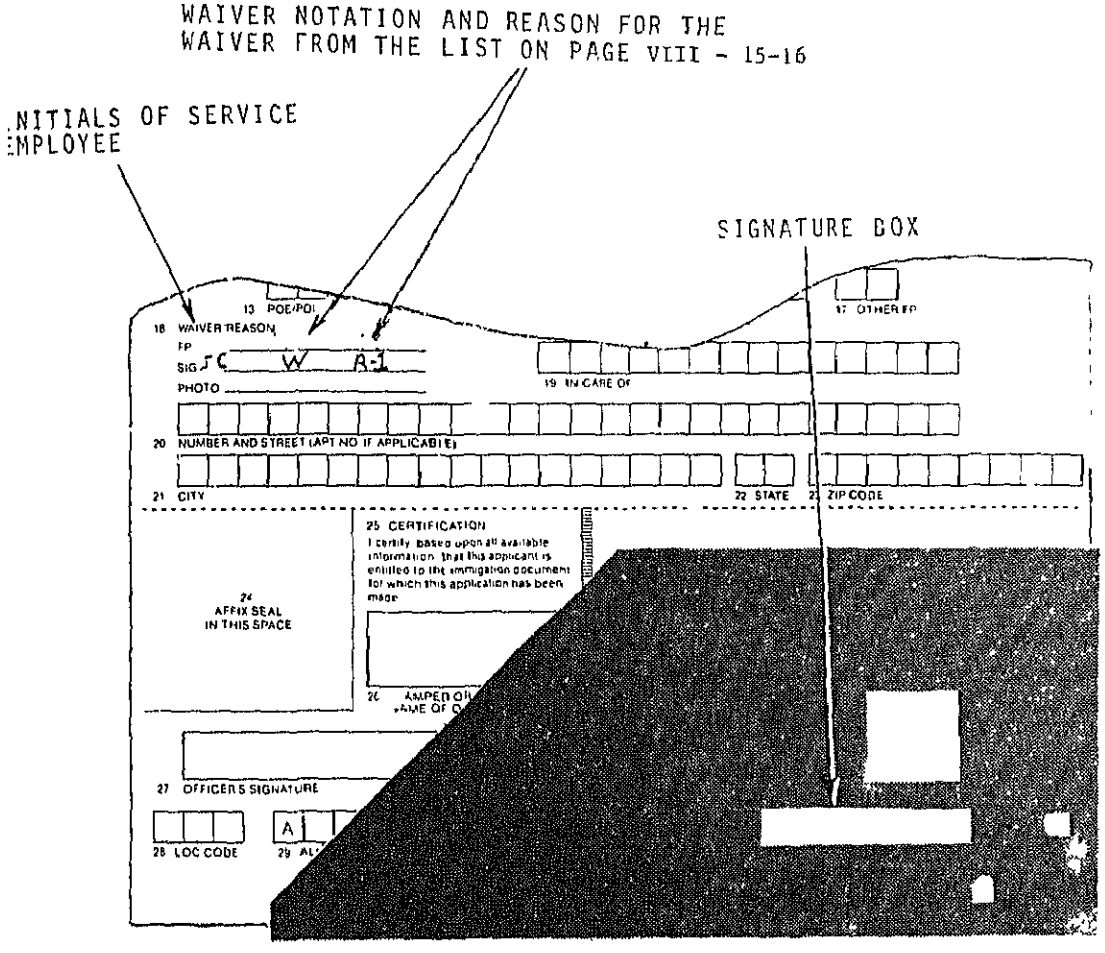
FORM I-89



WAIVING PHOTOGRAPH



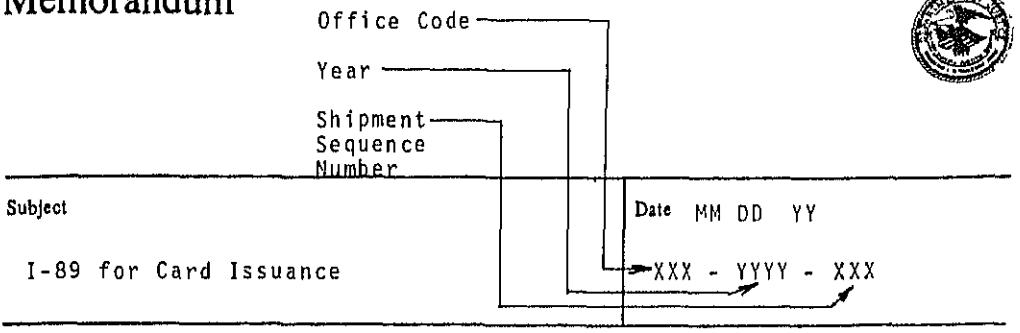
WAIVING FINGERPRINT



WAIVING SIGNATURE

APPENDIX - J

Memorandum



To Immigration Card Facility
P.O. Box 5928
Arlington, TX 76005-5928

From

Typed Name
Position Title
Location of Office

A total of _____ I-89's are enclosed with file numbers as listed below:

1. _____	16. _____	31. _____
2. _____	17. _____	32. _____
3. _____	18. _____	33. _____
4. _____	19. _____	34. _____
5. _____	20. _____	35. _____
6. _____	21. _____	36. _____
7. _____	22. _____	37. _____
8. _____	23. _____	38. _____
9. _____	24. _____	39. _____
10. _____	25. _____	40. _____
11. _____	26. _____	41. _____
12. _____	27. _____	42. _____
13. _____	28. _____	43. _____
14. _____	29. _____	44. _____
15. _____	30. _____	45. _____

_____
Signature

-2
-2-80)

FCO: MIA NOTIFICATION OF ERROR OFFICE USE:
07/02/87 SAM3-00033
REG: SOUTHERN D854-KE
063424

THE ENCLOSED FORM I-89 CONTAINS ONE OR MORE ERROR(S) WHICH CANNOT BE CORRECTED AT THIS FACILITY. PLEASE REVIEW THE ERROR(S) INDICATED BELOW AND MAKE THE NECESSARY CORRECTIONS. REFER TO M-226 FOR DETAILS.

APPLICANT DATA

ALIEN NUMBER: 23592496 BATCH NO: V7163460-

NAME: ZORNOSA DE GONZALEZ,YOLANDA

MOTHER'S FIRST NAME: AURA CARD TYPE: 1

FATHER'S FIRST NAME: ALFONSO

DOB: 010100 COB: 691 TRAN CODE: 1

PLACE OF BIRTH: BOGOTA

CITY OF RESIDENCE WHEN APPLYING: ORLANDO

CITY OF DESTINATION AT ORIGINAL ADMISSION: ORLANDO

CONSULATE OR INS OFFICE WHERE ADJUSTED: MIAMI

POE/POI: TAM CLASS: IR6 ADM/ADJ DATE: 060187 AMC:

OTHER FP DESIGNATOR: IN CARE OF:

NO & STREET(APT): 841 DOMINICO ST

CITY: ORLANDO STATE: FL ZIP: 32833-0000 LOC: TAM

REASON FOR REJECTION

13P THE DATE OF BIRTH IS MISSING, INCOMPLETE, INCORRECT OR ILLEGIBLE.

ADDITIONAL:_____

CORRECTION PROCEDURES

* REFER TO DATA COLLECTION MANUAL (M-226) WHEN PREPARING THE FORM I-89.
* FINGERPRINT PROBLEMS REQUIRE SENDING A CAMERA CARD WITH BOTH FINGERPRINT AND SIGNATURE.
* CHANGES TO BIOGRAPHICAL DATA CAN BE MADE IN APPLICANT DATA ABOVE.
* WHEN A NEW I-89 IS PREPARED, RETURN BOTH NEW AND OLD I-89 WITH THIS FORM.

RETURN TO: ICF P.O. BOX 5928 ARLINGTON, TX 76005-5928

PRINTED NAME PHONE NUMBER DATE

COMPUTER GENERATED ERROR LETTER FROM ICF

APPENDIX - L

U. S. Department of Justice
Immigration and Naturalization Service

Inquiry About Status of I-551
Alien Registration Card

Please wait at least 60 days after entry or 90 days after adjustment before inquiring. If this form is folded at the lines in the margins, the address of the Card Facility, or the address of the applicant, will show through a standard letter size (Number 10) window envelope. All information should be typed or clearly printed using ball point pen.

All inquiries should be forwarded to:

Immigration and Naturalization Service
Immigration Card Facility
P.O. Box 5928
Arlington, Texas 76005-5928

A. The person named below has not received his or her Alien Registration Card as of *this date* _____

1 Alien's Registration Number (Stamped in Passport)	2 Alien's Name (Last in CAPS)	(First)	(Middle)
A-			
3 Port of Entry/Office of Adjustment	4 Date of Birth	5 Date of Entry or Adjustment	6 Alien's Inquiry Concerns: ☐ Initial Card ☐ Replacement Card

B. This section is for reply by the Immigration Card Facility
The status of your Alien Registration Card is indicated by the block checked below as of *this date* _____

☐ 1 We regret to inform you that this office has no record of having received the necessary card application. Please contact the INS office that services the area where you reside for assistance.

☐ 2 Your card *is in production* and should be mailed soon. If the card is *not received within 45 days* of the above date, please contact the Immigration Card Facility again. Include a copy of this reply with your next inquiry.

☐ 3 Your card application (Form I-90) was returned to the immigration office in

_____

on _____

for corrective action, and has not been returned to us. Please direct any further inquiries to the immigration office that services the area where you now reside and include a copy of this reply.

☐ 4 Your card has been mailed and has not been returned to this office. If you do not receive your card within 30 days of the date of this correspondence, please go to the immigration office that services the area where you now reside to apply for a replacement card. Bring this correspondence with you when you apply.

☐ 5 Your card was returned to this facility and was subsequently mailed to a new address. If you do not receive your card within 30 days of the date of this correspondence, please go to the immigration office that services the area where you now reside to apply for a replacement card. Bring this correspondence with you when you apply.

☐ 6 Please complete *all* items in Section A and return this correspondence to the Immigration Card Facility at the address provided above. If Your Alien Registration Number is an 8 digit number which may be found in your passport or other documents provided to you as proof of legal permanent residence, ALL of the information is needed to conduct a complete search of our records.

☐ 7 You must complete a new application for a card at the immigration office that services the area where you now reside before the Immigration Card Facility can make the requested changes. The immigration office will then submit your application to this facility. When you apply, please take this correspondence with you.

☐ 8 Please contact your immigration office for assistance. This facility is responsible only for the production and issuance of Alien Registration Cards *after receiving an approved application from the Immigration and Naturalization Service office serving your area.*

☐ 9 Other: _____

_____

_____

_____

_____

_____

C. Please print or type applicant's name and complete address where the reply is to be sent

Applicant's Name

Street | Apt. Number

City | State | ZIP Code

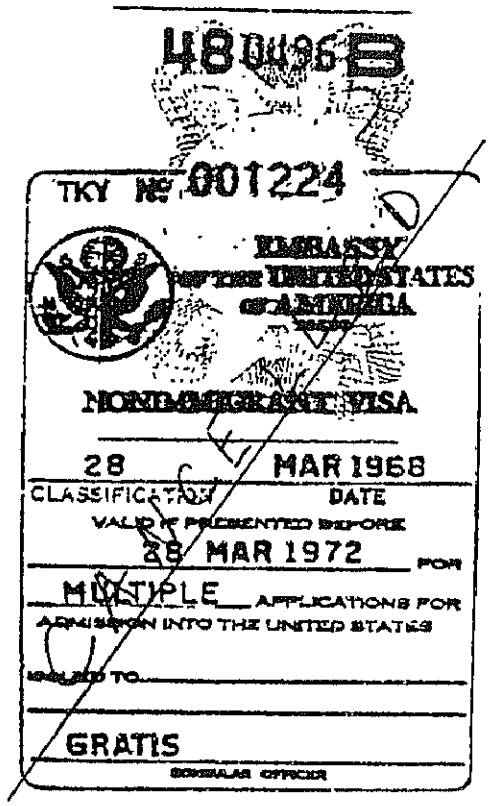
Reminder: If you move, please make arrangements with the U.S. Postal Service to send your mail to your new address. Your card is automatically mailed to the address shown on your application.

Is this a new address? ☐ Yes ☐ No

Form I-215 (Rev. 11-16-84)

APPENDIX - M

NONIMMIGRANT VISA



APPENDIX - N

.X TO
)GRAPH HERE--

Admission Number

318908691 01

Immigration and
Naturalization Service

I-94
Arrival Record

PROCESSED FOR I-551.
TEMPORARY EVIDENCE OF
LAWFUL ADMISSION FOR
PERMANENT RESIDENCE
VALID UNTIL
EMPLOYMENT AUTHORIZED.

1 Family Name

2. First (Given) Name

3 Birth Date (Day Mo Yr)

4 Country of Citizenship

5 Sex (Male or Female)

6 Passport Number

7 Airline and Flight Number

8 Country Where You Live

9 City Where You Boarded

10 City Where Visa Was Issued

11 Date Issued (Day Mo Yr)

12 Address While in the United States (Number and Street)

13 City and State